

CEMP-CR

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Real Estate Community of Practice
HOMEOWNERS ASSISTANCE PROGRAM

SECTION I. GENERAL

1. Purpose. This chapter sets forth the rules and procedures to be followed in the administration of the Department of Defense (DOD) Homeowners Assistance Program (HAP). The HAP is a special relief program available to eligible military and civilian employee homeowners. When a program is approved, it provides some financial assistance to these homeowners when they are not able to sell their homes under reasonable terms and conditions because an announced closure or reduction in scope of operations (hereafter referred to as closure) at a military installation so adversely affects the real estate market. HAP is neither a procurement program nor a land acquisition program. Although HAP does provide for acquisition of dwellings under certain circumstances, there is no governmental need for these properties and the government must resell them. HAP is not a claims program in an adversary sense and there is no provision for judicial review. Therefore, in order to carry out the intent of the congress, it is essential every effort be made to ensure each applicant is treated fairly and receives the maximum benefit as quickly as practicable and with minimum expenditure of time and money for administration. Reasonable doubts should be resolved in favor of the applicant.

2. Applicability. These procedures are applicable to Headquarters United States Army Corps of Engineers (HQUSACE), all major subordinate commanders (MSC) and district commanders having military real estate responsibilities. This program has worldwide application; however, no properties in foreign countries may be acquired except certain property located on a base or installation. HAP applies to members of the Armed Forces of the United States, Federal civilian employees and employees of a non-appropriated fund instrumentality (NAFI) who are U.S. citizens, and Coast Guard members, who meet eligibility requirements. Temporary employees and independent contractors and their employees are not eligible.

3. Authority. Public law 89-754. Section 1013, (80 Stat. 1255, 1290), as amended, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling which is situated at or near a military base or installation which the DOD has, subsequent to November 1964, ordered closed in whole or in part. AR 405-16 delegates and authorizes the Chief of Engineers (COE) to administer, manage, and execute the HAP in accordance with applicable laws and regulations and further delegates authority to the COE to redelegate this authority to MSC and District Commanders and their respective Chiefs of Real Estate. Such authority has been relegated to the MSCs and Districts and their Chiefs of Real Estate.

4. Responsibilities.

a. Real Estate Community of Practice (CEMP-CR). The Director of Real Estate, acting for the COE, has been delegated authority and responsibility for the administration of HAP. CEMP-CR, as the central

office for HAP, is responsible for supervision, interagency coordination, development of procedures, policy guidance, and acting as a congressional liaison, and is responsible for development of policy and processing of appeals forwarded from the districts and MSCs.

b. MSCs. MSCs have been delegated the authority to perform oversight and review of district program management, and based upon that review, or in response to specific requests, to provide local policy guidance to the districts and recommend program changes to CEMP-CR. MSCs also are responsible for review of appeals that have not been resolved at district level, or forwarding those appeals to CEMP-CR, if resolution cannot be reached at MSC level.

c. Districts. Districts designated by the Director of Real Estate, and their Chiefs of Real Estate, have been delegated the authority to administer, manage and execute the HAP on behalf of all claimants in accordance with the provisions of this regulation. It is contemplated that the district will dispose of all cases, except appeal cases where applicant agreement cannot be reached. Such appeal cases will be forwarded, in turn, to the MSC and CEMP-CR for consideration, and if necessary, forwarded by CEMP-CR to the Deputy Assistant Secretary of the Army for Installations and Housing (ODASA(I&H)) for final decision.

5. Funding.

a. Revolving Fund Account. The following special revolving fund accounts have been established: 97x4090 – Homeowners Assistance Fund, Defense, and 97x4090.0100 – Allocation to Army. Definitive instructions and requirements are contained within Finance and Accounting regulations.

b. Appropriation, Receipts and Allocation. This fund contains money appropriated in accordance with the Military Construction Act, and receipts from the management, rental, or sale of the properties acquired. Funds required for administration of the program will be made available by DOD to the Department of the Army (DA), for reallocation to HQUSACE. Funds provided will be used for purchase or reimbursement as provided herein, and to defray expenses connected with the acquisition, management, and disposal of acquired properties, including payment of principal, interest, and mortgages or other indebtedness thereon, as well as the cost of staff services, contract services, insurance, and other indemnities.

c. Obligation of Funds. The purpose of this paragraph is to briefly outline how the requirements for commitments and obligations of funds are fulfilled for HAP. For government acquisition, funds will be committed for a period not to exceed 60 days when the government's offer to purchase the applicant's property is conveyed to the applicant. The obligation will occur upon receipt of the accepted offer returned by the applicant. Commitments for government purchase are valid only 60 days, the length of the offer. If the government purchase is not completed, funds are to be decommitted/deobligated under HAP and made available to fund other government acquisitions.

d. Mortgage Assumptions. If the government is assuming a mortgage, the amount of the outstanding mortgage(s) must be processed for obligation through HQUSACE Resource Management Office (CERM) after the deed is executed, but before the deed is released for recording. However, prior to this stage, verify the current available balance for mortgage assumption authority with CEMP-CR and CERM-B. The total mortgage balance of homes assumed cannot exceed the ceiling on the district Fund Authorization Document (FAD). Mortgage assumption authority is a separate limitation on the district Finance and Accounting office and is not included in any other obligation authority. Any questions concerning mortgage assumptions should be directed to CERM-B. The obligation to complete the acquisition takes place at the time of settlement.

6. Provision of Information and Assistance.

a. Secretaries of the Military Departments. The Secretaries of the Military Departments and the directors of Defense Agencies are responsible for disseminating information on the program, rendering assistance to applicants, receiving and verifying statements regarding employment, and forwarding application to the appropriate district after a program is approved. The personnel officers of other Federal agencies having custody of an applicant's personnel records will verify statements regarding employment. If personnel files are not readily available, documentation, e.g., permanent change of station (PCS) orders, discharge orders, SF50s, or other official documents may be used to establish eligibility.

b. Applications. Applications for Homeowners Assistance, DD Form 1607, are available on the DOD forms web site as well as the USACE HAP web site, <http://hap.usace.army.mil/>. The application explains HAP objective, eligibility requirements, available benefits, and procedures to be followed in seeking assistance. DD Form 1607 is used to submit essential data required to obtain assistance.

7. Overseas Bases. Personnel assigned or employed at or near overseas installations are eligible to receive HAP benefits. For property located off-base, one is eligible to receive private sale benefits after the property is sold. For housing located on-base, whether it is sold or not, one is entitled to receive financial compensation based upon a specific statutory formula, even though government acquisition is not an option.

SECTION II, DEFINITIONS

8. Definitions. Unless otherwise defined in this chapter, the following terms and phrases are defined:

a. The Act. The "Act" refers to Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754 (80 Stat. 1255, 1290), approved 3 November 1966, as amended.

b. Base Closure Action "In Part." A base closure "in part" is defined as an action announced publicly by DOD or a proponent thereof, which involves one of the following: (1) termination of a separate and distinct mission or function at an installation, or (2) permanent relocation of a military unit from an installation, other than from an installation which includes in its basic mission the support or "homeporting" of various military units and has historically experienced repeated and sharp fluctuations in aggregate personnel strength.

c. Base Closure Action "In Whole." A base closure "in whole" is defined as an action announced publicly by the DOD or a component thereof, which involves the complete closing of a military base of installation, or termination of all existing functions (other than caretaker functions) at an installation.

d. Closure or Reduction Action. A closure or reduction action, as contemplated by the Act, is defined as a publicly announced action by DOD or a component thereof, which involves complete or partial closure of an installation, or reduction in the scope of operations.

e. District Commander. The term "district commander" means any USACE district commander or his chief of real estate.

f. Employment Near the Installation. For otherwise eligible personnel whose place of duty is not the installation, employment or assignment within normal commuting distance of an installation will be considered to be "near" an installation.

g. Equity. The remaining interest belonging to an applicant who has secured debt(s) with his/her dwelling, or the surplus of value which may remain after the dwelling has been disposed of for the satisfaction of such debt, or the amount or value of the dwelling above the total secured debt.

h. Housing Market Area. The housing market area is a geographic area in which the supply/demand of dwelling units is in competition based on available transportation facilities, local commuting habits, and the pattern of urban development. Location of the employees' dwellings affected by the announced action should be considered in determining the market area.

i. Installation. Installation means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of DOD. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

j. Liquidation. Satisfaction of the applicant's primary mortgage and such other eligible debts secured by the applicant's dwelling so that title is passed to the government with no money encumbrances.

k. Location of Dwelling Property "at or near" the installation. Dwellings located within the normal commuting distance of an installation will be considered to be "at or near" that installation.

l. Market Impact Zone. The market impact zone is defined as a residential district, neighborhood, or subdivision within the housing market area, or a category of dwellings by price, which is sufficiently impacted by an announced action to enable homeowners to qualify for assistance. The market impact zone should normally be a finite geographic area. Applicant dwellings which fall outside a predetermined market impact zone may be included depending on individual factors and circumstances, but may require an amendment to the original impact study. It is recognized that in many cases only a portion of a market area, or dwellings in a certain price bracket will be adversely affected by an announced action. An approved market impact zone is identified in the program approval letter.

m. Normal Commuting Distance. Normal reasonable commuting distance is to be determined from all relevant factors including, but not limited to, geography, commute patterns, demographics and availability of local transportation and will be defined in each program approval letter.

n. Public Announcement Date. The public announcement date is the date the Secretary of Defense, or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of the proposed closing or realignment of an installation under 10 U.S.D. 2687. It is also the date that a partial closure, which includes reduction in scope or operations, has been announced by DOD or a component thereof. In some instances, multiple announcement dates may be required due to multiple reductions in force, or DOD announcements and subsequent Base Realignment and Closure Commission recommendations. Any requests for multiple public announcement dates must be submitted to CEMP-CR for determination.

o. Realignment. Realignment includes any action which both reduces and relocates functions and personnel positions, but does not include reduction in force resulting from work-load adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

p. Reasonable Effort to Sell. Terms, such as "reasonable effort to sell," or similar phrases, relate to the amount of time available to the applicant (by direction of the employer or by personal choice) to sell the dwelling. Applicants should not be encumbered by a requirement to market the property beyond a reasonable time. This permissive definition of "reasonable effort to sell" is not to be construed as encouragement for private sale below apparent market value. Evidence of the applicant's efforts to sell should include a signed statement detailing his/her efforts to sell the home privately, along with copies of

receipts for advertisements placed in local newspapers or copies of listing agreements with real estate brokers. The applicant accepts the burden of demonstrating that when an offer is rejected it is because the offer was not reasonable.

q. Reduction in the Scope of Operations. A significant reduction in the scope of operations is defined as an action publicly announced by DOD, or a component thereof. That involves the permanent elimination of military or Federal civilian personnel from the installation, but does not necessarily involve, as in the case of a closure, termination of any mission or function, permanent relocation of any military unit, or permanent closing of all or part of a physical plant. A Reduction-In-Force, as defined in AR 5-10, Reduction and Realignment actions, is a reduction in scope of operations.

r. Sale. The term “sale” means an executed exchange of title and possession of real property for consideration of determinable value. A private sale is deemed to have occurred once legal and equitable title have passed to the buyer.

s. Program Approval Letter. A program letter, prepared by CEMP-CR and submitted for approval and signature by DASA(I&H), will set forth the applicable closure date(s), market impact zone for each affected installation.

SECTION III. ECONOMIC IMPACT

9. Announcement of Base Closure or Realignment.

a. Initial Actions. As soon as possible after a public announcement of an installation closure or realignment within its jurisdiction, the district will send a letter to the installation commander briefly explaining HAP benefits, how a program is implemented, information the district will need from the installation, and the name of the district point of contact. The district should make follow-up telephone calls to the installation’s personnel officer and public affairs and housing offices.

b. Collection of Real Estate Market Data. The district should begin to gather and assemble real estate market data on pre-announcement market activity in the general geographic area of the potentially affected installation. Such data may be obtained from the installation housing office, board of realtors’ multiple listing service (MLS), real estate agents, real estate appraisers, mortgage brokers, tax assessors, county courthouse records, utility companies, and the internet. There is no requirement for the district to do individual appraisals until after a program is approved.

c. Record of Potential Impact. Districts will maintain files documenting potential impacts from the announcement date to the date HAP is approved or denied. The file must include documentation of the district’s actions in monitoring the market. Newspaper articles or DOD/installation press releases should be requested to help establish the actual local announcement date.

d. Preliminary Cost Estimate (PCE). Within 30 days after the announcement, a PCE will be submitted to CEMP-CR estimating the potential cost of a program at the installation (See Addendum 1, page 47).

e. Potential Impact Report (PIR). Within 45 days after the announcement, a PIR will be submitted to CEMP-CR estimating the announcement’s impact on the real estate market (See Addendum 2, page 48). The PIR summarizes the district’s determination of program probability and results from gathering and scrutinizing data such as:

- (1) Maps showing the installation and nearby towns.
- (2) Populations and communities nearest the installation.
- (3) Installation population.
- (4) Statistical data on real estate values in price trends for the previous years.
- (5) Local realtor/appraiser estimates of the real estate market and the impact will be on the market as people begin to depart.
- (6) Indicators of the communities' economic dependence on the installation include:
 - (a) The installation's total workforce population (military personnel and civilian employees as well as contractor personnel, and their families.) is at least five percent of the local communities' population.
 - (b) Community businesses provide installation support, e.g., fast food, banking, laundry and dry cleaning, automobile services.
 - (c) Installation children attend community schools, or community children attend installation schools.
 - (d) The installation, as an entity providing financial income to the community, provides a substantial portion of the community's income when compared with other business in the area. How does the installation's payroll (including contractors supporting the installation) compare to other area employers?
- (7) Summary of area demographics, e.g., major employers.
- (8) Other information deemed useful and necessary.

f. Follow-on Actions.

(1) Installations without likely impact. The district will continue to monitor the markets in the areas of announced closures or realignments, updating PIR information every six months and reporting installation's impact status to CEMP-CR annually.

(2) Installations with impact, or likely impact. When it is determined the announced action has had an adverse impact in the area, the district will prepare a Market Impact study within 90 days of the determination.

g. Market Impact Study (MIS) (See Addendum 3, page 49). The district will forward the MIS, along with recommendation for approval or denial of a program to CEMP-CR within 90 days of identifying market impacts which would justify a potential program. If significant impact is not shown, the MIS will be updated every six months until impact is shown, or CEMP-CR directs otherwise. The MIS must address two elements.

(1) Element 1. The data gathered must support a conclusion that affected personnel will be unable to sell their homes upon reasonable terms and conditions - a decline of at least five percent in the market value of homes in the areas where personnel affected by the announcement reside, as measured by

market indicators. This conclusion will include data covering the period from two years prior to the announcement date to the present date.

- (a) MLS sales prices.
- (b) Significant increase in inventory of unsold homes.
- (c) Significant increase in area foreclosures, particularly Department of Veterans Affairs (VA) loans.
- (d) Decrease in the number of home sales.
- (e) Increase in the average number of days homes remain on the market.
- (f) Number of building permits issued for new homes.
- (g) Inability of affected personnel to sell their homes for amounts of existing mortgages.
- (h) Rental occupancy rates.
- (i) Unemployment rates.
- (j) Number of new home sales.

(2) Element 2. The announced closure or realignment must have resulted in the depression of home values in the area. Although the closure or realignment may not be the only reason for the depressed market conditions, the data collected must clearly reflect a downward trend in the market resulting from the announcement.

(a) Elements indicative of an installation's influence on a community's real estate market include those listed in subparagraphs e.(6)(a) through (d), page 6.

(b) Installation personnel required to leave the area due to new assignments or jobs at other installations are affected as if the announcement caused the market decline. They are not able to stay in the area and wait-out program approval or market recovery.

(3) Adequate investigation and discussion of the above two elements will justify approval or disapproval recommendation.

(4) In addition to the above, the MIS should include:

(a) Estimated cost of a program, based upon the number of estimated homeowners and average value of homes owned by affected personnel.

(b) The normal commuting distances of affected personnel.

h. Market Impact Report (MIR). An MIR may be used to expand the area of eligibility for HAP applicants who reside outside the market impact zone of an approved MIS.

(1) Districts will determine the normal commuting distance for each installation within their purview. The normal commute may be dependent upon a number of factors, e.g., geography, commute

patterns, demographics and availability of local transportation. The district chief of real estate is authorized to approve the normal commuting distance for each affected installation. Each district must provide normal the commuting distance for each active program to CEMP-CR.

(2) Eligibility should be considered for individuals assigned and commuting on a daily basis to the affected installation, whose dwellings are outside the pre-approved market impact area, but within the normal commuting distance, if there has been at least a five percent decline in the values of their homes since the announcement date. The decline in value will be determined by appraisals of the individual homes. An MIR may be used to approve applicant eligibility.

(3) An MIR must include a statement of the DOD announcement's responsibility for the market's decline shown by at least one criterion identified in the MIS and include the following:

- (a) Description of the area and its boundaries.
- (b) Distance from the installation.
- (c) Number of affected homeowners, if known.

(4) At least one property must be appraised in the area, ordinarily it will be the property owned by the applicant initiating the MIR. The appraisal should estimate the prior fair market value of the dwelling on or immediately before the announcement date and the current fair market value.

i. Announcement of Program Approval, Denial, Extension, or Termination. The district should coordinate such announcements with the installation and appropriate congressional delegations prior to release.

SECTION IV. ELIGIBILITY

10. Requirements. An applicant must meet the requirements set forth below to be eligible for benefits under an approved HAP:

a. Type of Employment of Service. The applicant must be a member of the Armed Forces; a Federal civilian employee at, or a NAFI employee, who is an American citizen, at or in conjunction with, the affected installation. Temporary employees serving under a time limitation, including reservists serving less than 180-consecutive day tours (10 U.S.C. Section 101 (d)(6)(a), and private contractors and employees of private contractors are not included.

b. Place of Employment. The applicant must have been:

- (1) a member of the Armed Forces assigned at or near the installation;
- (2) a Federal civilian employee employed at, near, or in conjunction with the affected installation;
- (3) a NAFI employee at a facility operated in conjunction with the installation, or
- (4) a civilian or NAFI employee who is a U.S. citizen serving overseas at the time of the announcement, who is entitled to reemployment rights at the affected installation.

c. Time of Employment. The applicant must have been:

(1) assigned to, or employed at, near, or in connection with the installation at the time of the announcement;

(2) transferred, or terminated as a result of a reduction-in-force, within six months prior to the public announcement;

(3) transferred from the installation or activity on an overseas tour within three years prior to the public announcement of the closure action;

(4) a member of the Armed Forces transferred from the installation within four years prior to the public announcement who, because of his/her military specialty and assignment planning, anticipated repeated assignments to the installation, or

(5) serving overseas as a Federal employee, with existing reemployment rights to the affected installation at the time of the announcement.

d. Owner-Occupant.

(1) At the time of the public announcement, or at the time of transfer or termination giving rise to eligibility, the applicant must have been either: the owner and occupant of property improved with a one- or two-family dwelling, situated within a normal commute of the affected installation; or, have vacated the owned dwelling as a result of being ordered into on-post housing within six months prior to the announcement.

(2) Spousal ownership is allowed, where either the applicant or a spouse is the fee simple owner of the property. Applicant must have been married to spouse at the time of the announcement.

(3) Where the applicant has an ownership interest with someone other than a spouse, the remaining owners must deed their interest to the applicant prior to government acquisition.

(4) Where the applicant has an ownership interest with someone other than a spouse, private sale benefits will be paid in accordance with the amount of interest the applicant has in the property.

(5) Applicants must hold fee simple title or have a contract to purchase in fee simple a qualifying residential dwelling, unless the dwelling is part of a cooperative association. Members of the Armed forces or Federal civilian employees may be considered owners of property without regard to the technical form of description by which an ownership interest is evidenced: provided, that, consistent with local practices and procedures, the applicant be shown substantially to have the rights and duties of a person with an ownership interest in the property, e.g., depending on relevant circumstances an applicant who holds title to a long-term ground lease rather than to the fee.

(6) Ownership interest in a cooperative home ownership association will be recognized under the cooperative homeownership laws of the State where the affected property is located. Ownership of a mobile home constitutes homeownership if the home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in fee simple, long-term lease (27.5 years or longer), or contract-to-purchase. The interest of a mere security holder, whether by mortgage, deed or trust, or other security instrument, does not constitute an ownership interest for purposes of HAP.

(7) An applicant who was the owner, but not the occupant at the time of announcement, due to temporary absence, i.e., a valid governmental purpose such as temporary duty, is considered eligible, if the applicant would have returned to the house after the temporary absence.

(8) An applicant may meet the owner-occupancy requirement for a dwelling in the market impact zone of an approved program, while meeting the employment requirement of a different approved program, provided that the applicant commutes on a daily basis from the dwelling from which compensation is sought to the affected installation. The prior fair market value is to be determined from the public announcement date of the HAP where the dwelling is located.

e. Relocation or Financial Hardship. As a consequence of the closure an applicant must relocate because of military transfer or acceptance of employment, or be unemployed, not as a matter of personal choice, and able to demonstrate such financial hardship. Additionally, for reasons other than the closure action, one may be eligible for benefits if he/she relocates, due to transfer, reassignment or involuntary termination of employment.

(1) For purposes of satisfying the relocation requirement, the applicant must relocate because of military transfer or acceptance of employment beyond a normal commuting distance from the dwelling for which compensation is sought (See subparagraph 10g). The new place of residence must result in a decreased commute distance as identified in the Joint Travel Regulation (JTR). The distance from the new place residence to the new place of employment must be a shorter distance than the distance from the dwelling for which compensation is sought to the new place of employment. However, districts have the discretion to determine distances based upon local commuting patterns. (See subparagraph 8f).

(2) Financial Hardship. As a consequence of the closure or realignment, the applicant's employment or service must have been terminated. The applicant need not relocate in order to be eligible under this subparagraph, but must meet the following additional requirements:

(a) As a result of such termination, the applicant must be unemployed, not by personal choice, and be able to demonstrate financial hardship, and unable to meet the mortgage payments and related expenses. Financial hardship due to unemployment in the area of the affected installation is a determination that must be made by the district. The applicant may be considered unemployed even though he/she was offered a comparable, or lower paying, position at another location beyond normal commuting distance. In support of the hardship allegation, the applicant is required to state why employment is not available or has not been accepted, the amount and frequency of all income, amount of debts, number and amount of all installment payments, including mortgage payments in arrears. When current income for the 90-day period preceding the date of application is less than current enforceable obligations against the applicant, including mortgage payments, it may be determined that unemployment and financial hardship, as required by the Act, have been established. Determination of hardship is to be based upon the relationship between income and obligations prior to and after termination of employment. Obligations incurred after termination of employment will not be included in the computations to establish hardship. The financial worth of the applicant need not be taken into account. In making the hardship determination, doubtful cases should be resolved in favor of the applicant.

(b) Applicants requested to furnish supporting information to establish financial hardship will be given sufficient notification of the provisions of the Privacy Act of 1974.

f. Termination or Transfer. The definition of termination or transfer varies according to whether it is a consequence of the closure, or it is for reasons other than the closure. In either case, the applicant must relocate at least 50 miles from the dwelling for which compensation is sought.

(1) Personnel affected by the closure action. If the installation is closing entirely, all personnel will be affected eventually as a consequence of the closure as all positions will be terminated. If there is less than an entire closure, only certain personnel will be affected. The issue is whether one's position has been or will be terminated because of the closure action. If this is the case, one may elect to retire or not to reenlist; voluntarily or involuntarily resign from the position; elect to accept other employment, i.e., through normal rotation, reassignment or transfer.

(2) Personnel not affected by the closure action. If one's position at an installation is not affected by the closure action, one may transfer, be reassigned or have their employment involuntarily terminated. This includes normal rotations and involuntary retirements, which are not a result of the announced action.

g. Employees who retire and relocate at least 50 miles from their pre-announcement dwelling will be presumed to have relocated in order to seek employment and, therefore, will be eligible for benefits.

11. Types of Benefits.

a. Private Sale.

(1) For dwellings privately sold, eligible applicants may be compensated for the difference between 95 percent of the appraised fair market value (FMV) or the property prior to the announcement date, and the appraised FMV of property at the time of sale, or the sales price, whichever is greater. Closing costs are reimbursable for private sales occurring after 5 October 1994. Closing costs reimbursable under chapter 14 of Joint Travel Regulation (JTR) are eligible for reimbursement under the HAP. Payment of closing costs may be made to individuals who elect to sell their homes privately, but do not receive a cash payment under the private sale option.

(2) When the applicant has sold his/her property for less than the mortgage balance (a short sale), and the mortgagee forgives any remaining obligation, private sale benefits will be calculated in an amount not to exceed the difference between 95 percent of the appraised FMV prior to the announcement date and the total of the short sale plus the amount of the forgiven obligation. Reimbursement for closing costs will be calculated under paragraph 29, below. If the difference between the sales price and the remaining obligation is covered by a promissory note, payment should be made directly to the mortgagee. If the benefit payment is not sufficient to satisfy the promissory note, the applicant must pay the difference. The mortgagee must be paid and a release of liability obtained prior to any benefit payment directly to applicants (See subparagraph 29 a. & b.).

(3) Effective 4 April 2008, HAP will assist eligible applicants whose mortgages are upside-down (their mortgage balances are larger than possible selling prices) and mortgagees are unwilling to agree to short sales. The Revised Private Sale Augmentation (RPSA) policy decision allows district HAP program managers to participate in private sale closings and pay-off mortgages, HAP payments will cover the difference between the private sale price and the mortgage balance, and all other normal HAP payments, e.g., closing costs. The selling prices of RPSA homes cannot be less than 55 percent of mortgage balances.

(4) Benefits available in connection with off-base overseas property are limited to private sale relief. In the case of private sale of property located on an overseas installation, the formula set forth in subparagraph b.(5) below is applicable, except that in computing benefits due, the sale price of the property will be added as a deduction under part (ii) for the formula.

(5) Where the district determines that improvements on the subject property have been destroyed or damaged by 75 percent or more by act of God, theft or vandalism, fire, flood, and/or other like casualty, after the date of the public announcement, the applicant will be entitled only to private sale benefits. The government will not purchase the applicants land. Benefits will be computed as follows:

(a) Determine the prior fair market value (PFMV) of the land and improvements in an undamaged condition.

(b) Determine the current value of the land and improvements in an undamaged condition.

(c) Multiply the prior undamaged value, (a), by 95 percent and deduct the current value (b); this is amount of the benefits to be paid to the applicant.

(6) Applicants will also be reimbursed for closing costs in accordance with subparagraph a.(1), above.

(7) Where the district determines that the improvements have been damaged after the announcement to the extent of 25 percent or less by acts of God, theft, etc., the applicant will be notified that he/she may elect to receive benefits on the basis of a private sale, as computed above, or sell the property to the government on the following basis: Multiply the PFMV by 75 percent and deduct the amount or percentage of damage calculated on the current value in the undamaged condition, less the amount of insurance payments received by applicant for the loss. Applicant may sell to the government for the amount of the outstanding mortgages, provided that the damages are repaired, or if insured, assignment of any insurance recovery for repairs may be made to the government.

(8) Where the district determines that improvements have been damaged after the announcement by acts of God, theft, etc., more than 25 percent but less than 75 percent, the applicant will be notified that he/she may receive benefits on the basis of a private sale, as computed above. Purchase of this property by the government will require the approval of CEMP-CR. If applicant wishes to sell property to the government, the district will prepare a disposal plan for submission to CEMP-CR.

b. Government Purchase.

(1) An eligible applicant may elect to sell the property to the government and receive, as the purchase price, an amount not to exceed 75 percent of the FMV prior to the date of the announcement, or the current total amount of outstanding mortgages, whichever is greater. Mortgages refinanced after the announcement date are accepted, if at the time of government acquisition, the balance does not exceed what it was at the time of refinancing, or what the balance was at the time of refinancing plus funds expended on home repair/improvement. Eligible applicants may also be reimbursed for mortgage interest, property insurance and taxes, from the date of application, or the date the dwelling is vacated, or the date of program approval, whichever is later, to the date of acquisition (See paragraph 29d).

(2) Junior mortgages or equity loans secured by the premises which are existing and current at the time of the public announcement are subject to the same limitations as primary mortgages.

(3) When the improvements are damaged, whether undiscovered or undisclosed, after determination of benefits under a government purchase, but before the closing, the purchase will be recalculated using the formulas set out in paragraphs 11a(4)(5)(6).

(4) Eligible owners of property located on an overseas installation who are unable to find a purchaser of the property may surrender their interest in the property to the government and be paid the

following amount: 90 percent of the sum of the purchase price of the dwelling and improvements thereon, and all costs of ownership, including interest on notes, and cost of utilities, service, maintenance and insurance; less the amount equal to the total of all housing allowances received from the government during ownership and occupancy of the dwelling, plus rents or other benefits collected. However, the maximum compensation shall not exceed 90 percent of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, relating to such property. The government may not acquire overseas off-post property.

(5) For refinanced mortgages refer to subparagraph 29g.

c. Foreclosure or Deeds in Lieu of Foreclosure.

(1) If foreclosure proceedings have commenced, an applicant may elect to receive either foreclosure benefits or private sale benefits. Foreclosure benefits may be paid directly to the applicant to reimburse for foreclosure costs paid by the applicant, or paid to third parties on the applicant's behalf. These costs may include direct costs of judicial foreclosure, expenses and enforceable liabilities according to the terms of the mortgage or promissory notes, and the amount of debts, if any, established against the applicant by a Federal agency for loans made, guaranteed, or insured by such agency following liquidation of the security for such loans., Any foreclosure entered into after the program approval date must have an enforceable liability in order for the applicant to receive benefits. Benefits may be paid to restore VA eligibility.

(2) Conveyance of a residence by deed in lieu of foreclosure is considered a private sale. However, if an applicant is required to execute a promissory note as a condition precedent to acceptance of a deed in lieu of foreclosure, and foreclosure proceedings have commenced, the applicant can elect between private sale and foreclosure benefits. Outstanding judgment liens, encumbrances of a personal nature, or junior mortgages acquired after the announcement date, will not be paid.

(3) Foreclosure benefits are not available in foreign countries; however, foreclosures or a procedure to a deed-in-lieu of foreclosure may be considered a private sale and computed as such.

(4) In situations where the insuring agency indicates foreclosure is a "No Bid," the agency does not reacquire the dwelling, but makes a partial settlement with the lien holder. It is possible that the sale of the dwelling by the lien holder will not completely satisfy the balance on the mortgage. In "No Bid" situations, a settlement with the insuring agency and the lien holder may be necessary, with a release obtained from each.

(5) If private sale benefits have not been paid, an applicant may request foreclosure assistance. If the time period for filing has elapsed, the case will be forwarded to CEMP-CR for approval to reopen the file. If private sale benefits were paid, the beneficiary may not later apply for foreclosure benefits in the event that he/she is liable upon the purchaser's foreclosure.

(6) The foreclosure must have commenced on or after the public announcement date. The date of commencement of foreclosure is to be determined under applicable state law.

(7) VA Compromise sales, where applicants sign promissory notes, will be treated as foreclosures for the purpose of paying benefits. The veteran and the VA agree to the sale of the property to another party at the current fair market value, as determined by a VA appraisal. VA will pay-off the mortgagee to eliminate the veteran's obligation to the mortgagee. The difference between the sale price and the remaining obligation is covered by a promissory note. The HAP benefit will be the pay-off of the

note. If VA waives payment of the promissory note, the applicant may elect to receive private sale benefits but the amount of the debt waived is added to the sale price of the property.

12. Property Subject to Mortgages.

a. Grant of Release. If the applicant is due compensation for private sale losses, the district must obtain written documentation that the mortgagee has released the applicant for liability. If loan is assumed, ensure applicant is released from liability on subject property prior to benefit payment. Applicants will be advised that private sale benefits or reimbursement for closing costs cannot be made until the mortgagee is paid-off. Documentation, such as full reconveyance or letter from the mortgagee, releasing the applicant from any liability under the mortgage is required. This is a statutory requirement for Federally insured mortgages and is a matter of policy for other mortgages.

b. VA loans. For VA loans made prior to 1 Mar 1988, the VA issues the release. For loans made on or after 1 March 1988, the mortgagee issues the release.

SECTION VI. APPLICATION PROCESSING PROCEDURES

13. Acceptance of Applications. The district will accept applications for HAP benefits. Application numbers may be assigned, but applications will not be processed until DASA(I&H) has approved a program for his/her installation. Potential applicants should be advised that in the early stages of a closure or realignment action, adverse housing market impact may not be evident. Indicators, such as sales prices, increased inventory and decreased sales, may be the best early indications of a market downturn. The applicant must be advised that the government cannot acquire the property or process any application for benefits until a determination of adverse economic impact has been made and a program approved. The applicant should be further informed that the public announcement date will be used to establish eligibility, not his/her application or program approval dates.

14. Application Form (DD Form 1607). If the DD form 1607 does not provide all the information required to process an application, the applicant may be requested to provide supplemental information. Whenever information is required, districts should provide applicants a copy of the Privacy Act Information Statement at Addendum 4, page 54.

15. Filing Period. Applications for HAP benefits should be presented to the appropriate district within the time frame authorized by the directive approving the program at the installation. Districts may receive late applications submitted up to six months after the approved time period with appropriate justification. MSCs may receive late applications for six months after the districts' extended approval period with appropriate justification. Any application filed after this time must be submitted to CEMP-CR, with an explanation and justification for late filing. CEMP-CR will make acceptance determinations on an individual basis. Only CEMP-CR may disapprove late applications.

16. Review of Application. After determining the applicant meets the appropriate eligibility requirements in Section IV of this chapter, the district will verify the applicant's employment. Incomplete applications will be returned in a timely manner for proper completion.

18. Certified Mail. When sending official notifications to applicants, districts may use certified mail, return receipt requested, for delivery of decisions that may be disputed. Use of overnight mail is authorized for delivery of deeds, closing documents, and payments.

19. Withdrawn, Closed, and Reopened Applications.

a. Failure to Accept Benefit Amount. After the district advises the applicant of the benefit amount, the applicant will be given 45 days to either accept or appeal the benefit. If there is no action within the 45 day period, the application will be considered withdrawn.

b. Applicant's Failure to Respond to Requests for Information. Where an applicant has failed to respond after 45 days to requests for additional information, the district shall advise the applicant in writing that the application is considered withdrawn. Applicant will also be informed of the specific time limitation within which an application, or request to reopen a file, must be made.

c. Ineligibility. If it is determined that an applicant is ineligible for benefits, or that a private sale applicant is eligible under the program but is not entitled to benefits, and no appeal has been filed within 180 days from the date of delivery of written notice of such decision to the applicant's last known address, the case will be considered closed.

d. Private Sale After Application for Government Acquisition. If the applicant elects government acquisition and then sells the dwelling privately before the government acquisition occurs, the application may be processed as a private sale, regardless of the time limitations for filing. The applicant must notify the district in writing of this decision, and furnish necessary documentation of the sale.

e. Withdrawal of Application to Pursue Private Sale. An eligible applicant may decide to withdraw his/her application to pursue private sale. They may later decide to sell the dwelling to the government as long as the request to reopen the file is made before the program expires. Requests to reopen files will be processed in accordance with paragraph 13 above.

f. Action Taken Following Determination of Appeal. If an appeal has been filed, the case will be considered closed once action has been taken in conformity with the final decision made on the appeal, as prescribed in the appeal procedures. See Section X.

g. Reopening Settled Cases. Applications which have been settled with benefit payments, in accordance with the Act and this regulation, will not be reopened or reviewed for the purpose of applying a different benefit formula, without the prior specific approval of CEMP-CR. Closed cases settled without benefits may be reopened, if that applicant is eligible for foreclosure benefits.

h. Reopening Withdrawn Cases. Withdrawn applications may be reopened by written request from the applicant within the time period allowed for filing applications in accordance with paragraph 15 above. The date the file is reopened will be considered the date of the application.

i. Long-term Leases Entered After Application. Applicants should be advised to enter only into month-to-month leases of their dwelling, after submission of an application. Otherwise the application may be inactive pending the end of the lease term. At that time, the application may be reactivated.

20. Records/HAPMIS. Each application received must be entered in HAPMIS, and reflect its current status as Active, Appeal, Complete, Withdrawn, Denied, or Suspended.

a. Active. Active cases are those in the process of being paid or denied, including foreclosure cases where the enforceable liabilities have not been established.

b. Appeal. Appeal cases are those that have been listed as any of the other categories, including, but not limited to, Active, Complete, or Denied, that have been appealed on any grounds. These cases will ultimately become Active, Suspended, Denied, or Complete, depending on the appeal outcome.

c. Complete. Completed applications are cases in which either payment or payments have been made to the applicant and/or third party, or applicants for private sale benefits, or those for which applicants have sold their homes for more than 95 percent of PFMV (therefore receiving a zero benefit).

d. Withdrawn. A withdrawn application is one that has been withdrawn by an applicant's written request, or the applicant failed to respond to a request for additional information. An applicant's written reinstatement request must be received before the program end date. After a program has ended, only approved request to reopen a withdrawn file would necessitate changing the status code to Active. The date the file is reopened will be considered the date of the application.

e. Denied. Denied status is reserved only for those applicants who do not meet the program eligibility requirements.

f. Suspended. Suspended cases are those cases which have been placed on the Suspended list due to an undue delay in processing caused by an action, or lack of an action, by the applicant. These cases include, but are not limited to applicants whose permanent change of station orders have not been issued, with tenants remaining in the property, who have requested a delay to pursue a possible private sale, and who wish to remain in the property until after completion of a school year. Applicants for private sale benefits who are unable to furnish a release of liability are also placed in Suspended status. A written notification from the applicant is required to change the application status. An application may be suspended indefinitely. Any application still in Suspended status at the end of the program date will be changed to Withdrawn. Only an approved request to reopen the file would necessitate changing the status to Active.

21. Application Numbers.

a. Assignment of Application Numbers. When a district receives an application, they will assign the application number and develop and maintain an individual file for each property. Applications for programs located in another district will not be assigned a number, but will be forwarded immediately to the district having jurisdiction. A number, once assigned will not be reassigned, regardless of the disposition of the original application. Reactivation or reopening of a withdrawn application does not require a new application or application number.

b. Method of Assignment. Application will be numbered in the following manner:

(1) Agency code to indicate the Federal agency accountable for installation being closed:

- 1 - Army
- 2 - Air Force
- 3 - Navy
- 4 - Marine Corps
- 5 - Defense Agencies
- 6 - Non-Defense Agencies

(2) District Code.

- Sacramento Dist.: L2
- Savannah Dist. : K6
- Fort Worth Dist.: M2

(3) Military/Civilian Code: 1 = Civilian, 2 = Military.

22. Real Estate Appraisals.

a. Preparation of Individual Appraisals. Individual real property appraisals will be prepared by staff or contract appraisers as guides to the determinations of fair market values (FMV), except as set out in paragraph e.(2) below. An appraisal will be prepared by staff or contract appraiser to determine the FMV of the property prior to the announcement, and at the time of the sale of the property. Appraisals may be waived where foreclosure benefits only are to be paid. (See Addendum 5, page 55 for general information on HAP appraisals.) Care should be exercised to avoid the expense of appraisals that are elaborate or more detailed than necessary for HAP. Existing valid appraisals may be used in lieu of ordering new appraisals. As an exception to Chapter 4 of this regulation, FNMA Form 1004, with attachments as required, or a reasonable variation, may be used. The purchase price and the selling price should be available to the appraiser. Substantial differences between the “before” appraisal and the applicant’s purchase price should be fully explained, as well as substantial differences between the “after” appraisal and the applicant’s selling price, if an amount other than the selling price is used to determine benefits.

b. Provision of Appraisal Information to Applicant. Applicants will be notified of the determinations of value made for their properties. Appraisals will not be provided to applicants beyond the same level provided in other proceedings, e.g., acquisitions under Chapter 5.

c. Contract Appraisers. District offices should acquire contract appraisers once a program has been approved for a location. Contracts, in accordance with the Federal Acquisition Regulation, or blanket purchase agreements with several contract appraisers, should be negotiated when circumstances warrant. The contract should establish a firm deadline for return of completed appraisals. The district will monitor contract performance under Corps Guidelines and establish a tracking system to ensure appraisals are completed in a professional and timely manner.

d. References. See Chapter 4 of this regulation.

e. Determination of fair market value (FMV). The district will make determinations of FMV using the real estate appraisal report, loan commitment documents, and any pertinent information contained in records on the value of this property.

(1) Date of Determination of Prior Fair Market Value (PFMV). The PFMV will be determined as of the date of the announcement or immediately prior to the date of announcement. For programs with multiple announcement dates, the PFMV will be determined as of the purchase date for purchases between program announcement dates.

(2) FMV Determined by Private Sale. If the applicant has made a reasonable effort to sell his/her dwelling and there is no reason to believe that the transition misrepresents the FMV of the applicant’s property at the time of the transaction, then the sales price should be used as the “after” value. Reasonable doubts should be resolved in favor of the applicant. Although the sales price normally will be used as the “after” value, it must be recognized that some applicants may make poor bargains and sell their dwellings at prices well below the current market value for comparable properties. Individual appraisal of current FMV should be used as a guideline to ensure that private sale payments are reasonable. If the appraised value exceeds the sales price by ten percent or more, the reviewing appraiser will review the appraisal for completeness and accuracy. After the reviewing appraiser confirms the appraisal report, the appraised FMV may be substituted for the sales price in calculating the benefits. However, if the applicant has made a reasonable effort to obtain the highest value available, the benefit of the doubt should be accorded the applicant and the sales price may be used as the after value. All records should accurately and fully document the reasons supporting substitution of the appraised value.

23. Residential Property.

a. **Property to be Included.** A one- or two-family dwelling, which is located on a farm, or on many acres, only includes land as would be reasonably constitute a residential property within the area. Land owned by the applicant that does not adjoin his residence will not normally be considered a part of the property. Whether an adjoining lot should be included as part of the residential premises will depend on whether it is, a part of the residential premises and was used as such, and if it can be readily severed and disposed of economically without affecting the disposal of the residential premises. The method generally used in the market for selling and purchasing residential premises will be considered. Applicants should not be left with a lot which is less than the size required for a dwelling, similar to those in the area, or which would be considered unmarketable except as part of the residence. These are judgment factors to be determined and applied to individual cases by the district.

b. **Dwelling Unit.** The Act refers to “any property improved with a one- or two family dwelling”. Therefore, the property must include a dwelling unit as of the date of the public announcement. The dwelling must be, or have been, an integral part of the property. Individual units in condominiums or cooperatives qualify. Mobile homes will qualify, if mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer, or contract-to-purchase).

c. **Permanent Structures on Leased Land.** Dwellings on leased land, or on land not owned by the dwelling’s applicant owner, will be considered real estate and are entitled to private sale benefits only.

SECTION VIII. ACQUISITION – CLOSING PROCEDURES

24. Acquisition Limitations. The procedures set forth in Chapter 5, Section I of this regulation and EC 405-1-11, 30 Dec 2003, paragraphs 1-5, 1-6 and 1-10, should be used for acquisition of HAP properties, except as otherwise provided herein, or where the procedure is clearly not necessary for HAP, i.e., Negotiator’s Report, Notification Letters required by Public Law 91-646, etc. The applicant should be made aware of the following:

a. **Procedures.** An eligible applicant should be advised of the acquisition procedures, conditions of a sale to the government, and the estimated time to complete the acquisition.

b. **Time Limitation.** Election to sell one’s dwelling to the government is voluntary. The decision must be made within 45 days after the applicant has been advised of the FMV or the application will be considered withdrawn. The government will take title only by a direct purchase transaction since condemnation is not authorized.

c. **Benefit Determination by Government.** The government will determine benefits. All efforts will be made to afford the full benefits authorized by the Act.

d. **Balance of Public Announcement Date.** HAP benefits paid by the government will be limited to the outstanding mortgage existing on the day of the public announcement, see paragraph 8n.

e. **Government Purchase is not Displacement.** Government purchase of the property is not considered displacement under Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) since the government does not require the property.

f. Deteriorated Properties. The district commander may decide not to acquire a home where the applicant has allowed the home to deteriorate beyond normal wear and tear. If the property has been abused, the applicant should be given an opportunity to rectify the deficiencies.

25. Environmental Inspection. The requirement to perform an Environmental Baseline Survey (EBS) has been waived. Inspections for defective paint, friable asbestos will no longer be part of the acquisition process. Dwellings will be acquired “as-is”, unless there is something readily apparent which would make the properties difficult to market for disposal. In those cases, CEMP-CR guidance should be expeditiously obtained, and consideration given to obtaining contractor expertise. Either the Corps or another agency will accomplish mitigation after acquisition. ‘Routine inspections will identify any lead-based paint, as defined in Addendum 6, page 57, and any friable asbestos. Although the Corps is not required to inspect or test for other contaminants, the inspector should document any observed or suspected contaminants or environmental hazards (See Addendum 6).

a. Method of Performance. The inspection may be performed by qualified district personnel or by contractor.

b. Format and Use. No particular format is required for the reports, which become part of the application file.

c. Other Environmental Inspections. Any inspections or certifications required by state law or by local custom, such as radon screening or well water certification, will be obtained prior to government acquisition.

26. Acquisition Procedures.

a. Conditions of Sale. The applicant will be advised in writing of the prior FMV, his/her options under HAP, and the conditions under which the government will purchase his/her property. Applicant must then respond in writing within 45 days whether he/she wishes to withdraw his/her application, appeal the appraised value(s) or request the government purchase his/her dwelling. Both applicant and spouse should sign the request and state that they understand the conditions of sale.

b. Preparation and Processing of Deed and Closing Documents. Upon receipt of the applicant’s request, the deed and other closing documents will be prepared and sent to the applicant with a cover letter explaining the financial details, including tax liabilities, and specific instruction on completing and returning the documents.

c. Pre-Closing Inspection. Prior to closing, a pre-closing inspection of a property being acquired will be made.

27. Outstanding Rights.

a. Rights of Third Parties in Property. Rights of third parties in the property, such as easements for public highways and utilities, will be left outstanding, provided that this is consistent with good real estate practices in the community and will not prejudice the marketability of the property. Mineral and water rights may also fall within this category. Restrictive covenants must be satisfied or removed by the owner unless they are of a nature which will not prejudice the marketability of the property.

b. Waiver of Outstanding Rights. District commanders, and/or MSC chiefs of real estate, will determine whether any outstanding right or interest in the property should be administratively waived.

28. Assumption of Primary Mortgage. When the applicant's dwelling is purchased, the primary mortgaged may be assumed by the government, and other mortgages existing on the public announcement date will be paid-off as part of the closing of the purchase transaction. Where the government has assumed the mortgage indebtedness, the benefits accorded by the Act are considered fulfilled, even though the primary mortgage is left outstanding. The Office of the Secretary of Defense has authorized liquidation of mortgages in those cases where the district considers it to be in the public interest. Each case will be considered on its individual merits. Loan assumption fees and any other costs incident to assumption of mortgages should also be considered in determining whether to liquidate.

29. Closing and Settlement Costs – Government Purchase.

a. Release of Liability. When the government assumes a mortgage, it must release the applicant from liability in the event of a subsequent foreclosure.

b. Release of Mortgage. All mortgages, which the government has agreed to pay, will be released of record after delivery of the deed conveying the property to the United States. The applicant is ineligible for direct purchase unless unpaid judgments, liens, encumbrances, and pending public improvement assessments are satisfied and a release obtained.

c. Costs Paid by the Government. The government will pay closing and settlement costs. That portion of the sellers closing costs which represent the normal closing costs required to be paid by the seller at closing are a taxable benefit and must be separately identified as such.

d. Reimbursements. The government will reimburse the applicant for mortgage interest (not principle payments), taxes, and hazard insurance premiums that have been paid for the period from the date of receipt of the application for benefits, the date of vacation of the premises, or the date the program is approved, whichever is later, through to the date the government acquires the property. A determination of the pro rata share of taxes and insurances premiums should be based on information received from the tax assessor and insurance company for the actual amounts payable or paid, without reference to payments to the escrow account, which will eventually be returned to the applicant. Districts should advise the applicant of the projected closing date, and that he/she will not be reimbursed for interest or other expenses incurred by delays in closing, if such delays were caused by, or at the request of, the applicant, and if such delays were unreasonable. If an applicant has previously withdrawn and application, settlement and closing costs will be prorated only from the date an applicant reapplies for benefits. The applicant must be fully informed that the consequence of withdrawal of a government acquisition application is loss of reimbursable expenses from the date of the application. The applicant is responsible for all mortgage payments, including interest, to the date of closing and the government will not assume any responsibility to avert foreclosure.

e. Rental Income. Income received by the applicant for rental of the property during the period from the date of receipt of his/her application, the date of vacation of the premises, or the date the program is approved, whichever is later, will be deducted from the closing and settlements costs. HAPMIS will compute these payments when necessary dates, interest, etc., are entered.

f. Amount of Outstanding Mortgages. The amount of the outstanding mortgages, as contemplated by Section 1013(c) of the Act, will be the total amount which the applicant, as the mortgagor, owes pursuant to the mortgage agreement(s). This will include taxes, hazard insurance, and interest and penalty charges which have accrued and have be added to the total indebtedness, adjusted to provide for the costs for which the applicant is responsible, as set forth in subparagraph c. above. Outstanding mortgages include equity loans and other open-line-of-credit loans that are secured by the subject dwelling. The assumption

or payoff of the outstanding mortgage balance of equity loans is limited to the balance due and owing as of the public announcement date.

g. **Refinanced Mortgages.** Refinanced mortgages will be acceptable if, at the time of government acquisition, the principal balance does not exceed the mortgage balance of the superseded mortgage. Homeowners who incorporate the costs of refinancing into the mortgages will have to “buy-down” the principal balance before government acquisition.

h. **Property Taxes.** Property taxes are prorated at the time of acquisition. Sometimes the amount collected is greater than that owed. All property tax refunds belong to the government.

30. Title Evidence.

a. **Procurement of Title Evidence.** For the purposes of this chapter, districts may contract with title companies to record the deed after making a title update. Districts are responsible for verifying that the deed is properly recorded. If a survey showing the location of the buildings on the property is available from the lender, or other source, at little or no cost, it should be included as part of the title evidence. Where reasonable grounds exist to believe that some irregularity in title might be disclosed by a survey, the district should obtain a survey.

b. **Use of Preliminary Title Evidence.** When a determination is made that an applicant is eligible for assistance by government acquisition, preliminary title evidence for the property may be obtained from the applicant or the mortgagee, and furnished to the title company in an effort to reduce the costs by requesting the re-issue rate.

31. Hazard Insurance.

a. **Prior to Closing.** Properties to be acquired by the United States will usually be covered by hazard insurance. Owners should be advised that improvements on the land remain their property until title has been vested in the United States. Loss or damage to the property caused by fire, acts of God, flood, theft, or vandalism, will be borne by the applicant, subject to verification by inspection of the property before vesting title.

b. **After Closing.** After title has vested in the United States, losses to improvements not caused by the willful act or gross negligence of the former owner will be borne by the United States. The government will not carry insurance of any nature on the property except to the extent explained in subparagraph 31.c. The time and method of cancellation and negotiation for refund of premiums paid, will be the responsibilities of the former owner.

c. **Insurance for Mortgagee’s Benefit.** Upon assumption of a mortgage by the government, the mortgagee will be advised that the insurance coverage should be canceled and that the United States does not intend to carry insurance of any nature on the property. If the mortgagee will not agree, a property insurance policy in an amount equivalent in the unpaid balance of the mortgage assumed by the government will be purchased at DOD expense. The mortgagee may then cancel the existing property insurance policy or release it to the former owner for cancellation. Any unearned premiums will be the property of the former owner. Insurance claims arising after closing must be assigned to the government.

32. **Occupation of Property.** Generally, the applicant should arrange for tenants to vacate the property before the pre-closing inspection is made. Prior arrangements must be made if the district chooses to allow the tenants to stay after the government’s acquisition. A lease authorizing the occupancy will be completed in accordance with the guidance in Chapter 8 of this regulation, and will require the tenant to

carry a personal and liability insurance policy for the term of the lease. If the property is acquired with the tenant in occupancy, the tenant must sign a “disclaimer” agreeing to vacate the premises on demand.

SECTION IX. MANAGEMENT AND RESALE

33. Purpose. This section governs the management and resale of properties that have been acquired by DOD under HAP, and sets forth responsibilities, procedures, methods, and guidance for management and resale activities for these properties. The sale of HAP homes will be in accordance with accepted real estate practices and procedures within the State where said properties are located, unless where prohibited by Federal law. Districts may use this section to develop a management and resale program to provide for the required activities. The purpose of the property management and resale program is to reduce inventory of acquired properties in a manner that maximizes the net return to the government while mitigating the adverse impact on the affected residential areas and communities.

34. Basic Policies. The following guidelines are the basic policies for the management and resale of HAP properties.

a. Competition. Unless otherwise permitted herein, competition is required to provide an equal opportunity for all to purchase HAP properties through an open bidding process.

b. Contracting. All contracting will be accomplished in accordance with applicable laws and regulations.

c. Bidding. HAP properties will be sold to the general public through the open bidding process unless the district determines that advertising and open bidding will not serve a useful purpose. Then, direct sales may be negotiated. Sales authorized to other Federal, state and local governments may be directly negotiated, as provided in this section, without an open bidding process when determined appropriate by the district, when bidding would not serve any useful purpose, or when it is no longer in the best interests of the government.

d. Price. All initial list prices will be no less than the current FMV as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List process may be periodically adjusted with appraisals, taking into consideration the necessity for rapid sales, based upon the market where the property is located.

e. Distribution of Listings. Sales brokers approved to submit bids will be furnished copies of all listings currently to allow each broker an equal time allotment for selling the properties.

f. Advertising. All advertising will be accomplished through the local MLS and/or news media to ensure the greatest practical readership and to provide as many buyers as possible in the market for such properties an equal opportunity to bid. Brokers may and are encouraged to advertise the listed properties at their own expense, but at no cost to the government. Properties may not be advertised for sale until they are officially listed for sale by the government.

g. Eligible Brokers. Brokers must sign a nondiscrimination certification and a participation agreement acknowledging that they are aware of and will adhere to the laws and regulations pertaining to HAP. All participating brokers must be licensed real estate brokers in the state where the properties are located.

h. Ineligible Buyers. Government employees associated with HAP, or those who would otherwise have an advantage over the general public, are prohibited from purchasing properties under this program. No member of or delegate to Congress is eligible to buy or benefit from a purchase of a government-owned property acquired under HAP. No sales will be approved that may show a conflict of interest.

i. For Sale Signs. No signs will be placed on the property except those supplied or authorized by the Corps of Engineers.

j. Warranty. All properties are sold "as is", and no warranty whatsoever will be provided regardless of method of sale. The government does not make any guaranty of warranty, express or implied, with respect to the property as a quantity, quality, character, or condition, size or kind, or that the property is in condition or fit to be used for the purpose intended by the buyer. Properties having known environmental contamination, historical significance, located in flood plains, in an airport clear zone, or other significant matters or potential impediments or conditions to resale will be advertised to reflect these issues. The Corps will make no repairs to the property, except as identified in subparagraph 35q., after execution of the contract unless stated in the contract and/or required by the lending institution as a condition of the loan.

k. Responsibility of Bidder.

(1) The failure of the bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property, or negligence, or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid. This and the following condition, or conditions that are substantially the same, will be a part of the sales contract submitted as a bid by the broker.

(2) It is the duty of each bidder and the broker to ensure that the bid is delivered by the time and at the place prescribed in the advertisement or announcement.

l. Financing. All properties are sold for cash. Certified checks, cashier's checks, electronic funds transfer, or checks drawn upon the mortgage company's escrow account are forms of acceptable payment. Loan financing is the responsibility of the broker and the buyer. Financing is open to all legally authorized loan institutions. Government insured loans are acceptable.

m. Conveyance Document. All conveyance documents will be by quitclaim deed, unless prohibited by state and/or local laws. Conveyance documents other than by quitclaim deed must be forwarded to CEMP-CR for approval by the Department of Justice. The district chiefs of real estate are authorized to execute both quitclaim deeds and leases of HAP properties on behalf of the government.

n. Exemptions. The HAP resale and management program is exempt from the following programs.

(1) The law authorizing HAP grants an exception to reporting requirement of Title 10, U.S.C., Section 2662, for properties acquired, managed, and sold under HAP. This includes both sales and rentals of properties.

(2) Screening HAP properties by HUD for possible use by the homeless in accordance with provisions of the McKinney Act.

(3) Federal Property and Administrative Services Act of 1949.

(4) Real property accountability requirements of AR 735-5 and those of Chapter 16 of this regulation.

o. Deposit and Expenditure of Funds. All receipts and expenditures in connection with the HAP management and resale program will be deposited and processed in the Homeowners Assistance Fund, Defense account in accordance with DA PAM 31-100-XX, as may be modified from time to time by the Corps of Engineers Resource Management element. This includes all receipts and expenditures from sales, rental collections, repairs, contract payments, earnest money deposits, etc. associated with this program. Funds may not be used for programs other than HAP.

p. Property Accountability. Properties will be accounted for through use of HAPMIS.

35. General Requirements and Procedures for Administering All Management and Resale Methods.

a. Nondiscrimination Policy. All contracting, occupancy, rental, and sales activities referred to in this section must be conducted without regard to race, color, creed, religion, sex, national origin, age, familial status, or handicap. Contractors are required to agree to and execute a nondiscrimination certification.

b. Environmental Requirements and Standards. Sales, leasing and management of properties acquired under HAP are not subject to Preliminary Assessment Screening requirements. However, actions will be taken to satisfy legal requirements for properties containing contamination by lead-based paint, friable asbestos and other contaminants. Radon testing will be appropriately performed and evaluated where it is customary for the specific program area. Properties known to be contaminated will be managed and remedial actions taken prior to resale in accordance with applicable laws and regulations.

c. Lead-based Paint Poising Prevention. Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR Part 35 and 40 CFR Part 745. Purchasers of properties with potential lead-based paint hazards will be required to complete an Addendum of Sales Contract which will assure the purchaser is notified of and the risks of potential hazards of lead-based paint and that all required disclosures to the purchasers have been made.

d. Net Offer Bid. The net offer is the amount of the bid minus all deductible expenses to be paid by the government. Such deductions may include, but are not limited to: customary closing costs, cash bonuses, sales commission, repairs to property, taxes, title insurance, attorney's fees, termite inspection fees, etc. If requested by the purchaser in the bid, the government may pay all or a portion of the financing and loan closing costs not to exceed the percentage as determined appropriate by the lender. The broker's sales commission will not exceed the percentage of the purchase price which is customary for the area, except for cash bonuses as described herein. The amount requested by the purchaser to be paid by the government will be deducted from the amount bid for the property to determine the net offer. Where the actual financing and loan closing costs exceed the amount determined appropriate by the lender, the amount in excess must be paid by the purchaser and is not included in the deduction from the bid in determining the net offer.

e. Cash Bonuses. Cash bonuses may be awarded to brokers as determined necessary for purposes of accomplishing sales in hard-to-sell market areas. Any cash bonus offered to brokers by the government for the sale of hard-to-sell properties is an amount in addition to the sales commission, and is included with the commission and deducted from the amount bid for the property to determine the net offer. Districts may award cash bonuses for \$1,000 and MSCs may approve those between \$1,000 and \$2,000. All cash bonuses requirements over \$2,000 will be forwarded to CEMP-CR for approval.

f. Acceptable Bid. Criteria for determining an acceptable bid must be determined prior to the public opening of bids. Minimum amounts for accepting net offers should be established so bidders may be informed at the time of bid opening whether their bid is acceptable. The definition of an acceptable bid will vary from program to program depending on the market conditions and other variables. The district will accept the most responsible bid producing the greatest acceptable net offer, as defined above, to the government and otherwise meeting the terms of the government's listing of the property. A net offer tie will be settled by a drawing.

g. Bid Period. Bid periods are to be established by the districts to ensure fair and equal competition and to maximize execution of HAP. Ten days after the property is publicly advertised is the recommended bid period in most cases and the bid opening should follow on the eleventh day or the next business day. After properties are initially advertised, bids are accepted for a specified period, with all offers received during that period considered to have been received simultaneously, except for "full list price offers" which may be accepted as described in the following subparagraph. Offers received on a property before the specified bidding period begins will be returned for resubmission during the advertised bidding period. Offers received after the period will not be considered at the bid opening, but will be considered during the extended listing period, if no acceptable bid was received during the specified period. If no acceptable bids are received after all reasonable efforts have been made to advertise, direct negotiated sales are authorized and, as last resort, leasing of properties may be necessary in the best interests of the government.

h. Full List Price Offers. The district offices may operate under a "full list price offer" program by opening offers periodically at specified times, predetermined and publicly announced, during a specified bidding period. A full price offer is an offer for the full price listed minus the broker's sales commission, the government's customary closing costs, related fees that would be paid for any and all bidders and are customary for payment by the government in the program area, and, if applicable, minus the broker's cash bonus. If an offer for the full list price or greater than list price offer and otherwise meeting the terms of the listing is received, it will be accepted at the time of the opening and the remainder of the bid period canceled. A backup offer representing the next highest offer may be accepted and held pending closing of a transaction. Districts utilizing this program will establish procedures to ensure fair and equitable treatment to all bidders and sales brokers. Brokers should be instructed to label the envelopes containing the offer as "Full List Price Offer" when applicable.

i. Extended Listing Period. Properties not sold during a specified time for bidding may remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled bid opening. If no acceptable bids are received after a reasonable period of time, the property will be reanalyzed and managed according to the determinations after the review. The list price and conditions of the property listing will be adjusted to obtain expeditious resale of the property while also maintaining the best interests of the government. If a property fails to generate an acceptable bid or offer during the specified bidding period, it may remain on the market as an extended listing until it is either sold or readvertised under different terms, or alternative management becomes necessary.

j. Bid Requirements.

(1) All bids submitted, whether during the specified bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form provided to all participating brokers as prescribed by the district, and be signed by both the submitting real estate broker or authorized agent and the prospective purchaser. The bid must be submitted with deductions from the offering price, resulting in a net offer to the government. If the purchase is to be financed by an insured mortgage, a district office

may also require that supporting exhibits for mortgage credit analysis be pre-qualified by the broker accompany the initial submission of the bid.

(2) Bids submitted during the scheduled bid period must be received in a sealed envelope and must properly indicate the property for which the bid is being submitted by being marked with the property number, address, and return address of the broker. The envelope may contain any other markings considered necessary by the district for absolute identification.

(3) Bids received during an extended bid period may be submitted and processed by facsimile.

(4) Noncomplying bids will be returned to the broker with an explanation as to why the bid was considered to be in noncompliance and information about whether the property is still available and, if still available, the terms for resubmitting an offer.

k. Earnest Money Deposits.

(1) The amount of earnest money deposit will be that amount which is customary for the area as determined by the district. In determining the amount of earnest money deposits, a district should consider comparable practice in the locality, area real estate market conditions, the type of offers generally received, and the ability of the area's typical buyers to secure financing. The district will furnish information on the amount of the required earnest money deposit to each participating real estate broker.

(2) All bids must be accompanied by earnest money deposits in the form of a cashier's check, certified check, or money order made payable to the appropriate Corps of Engineers finance and accounting office, or a certification from the real estate broker that the earnest money has been deposited in an escrow account. If a bid is accepted by the district, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned.

(3) To the extent practicable, districts will establish earnest money certification systems with participating brokers. Such systems are to allow brokers to hold earnest money until bid rejection or closing which will eliminate the cumbersome requirement for Corps finance and accounting offices to process these payments when received by the districts.

1. Forfeiture of Earnest Money Deposits - Failure to Close Transaction. The failure by a purchaser to close on the sale of property within the allowable time period, including any extensions granted by the government, will result in the total or partial forfeiture of the earnest money deposit, except where the purchaser presents documentation to the government that one of the special circumstances described below:

(1) In those instances where, despite good faith efforts by the purchaser, there is an inability to obtain a mortgage loan from a recognized mortgage lender.

(2) For other good cause, as determined by the district office.

m. Multiple Bids by One Bidder. Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective buyer. If a buyer submits multiple bids on the same property, only the bid producing the best net offer to the government will be considered. A buyer may be asked to indicate a priority for properties when submitting multiple bids thus allowing the district to award the first acceptable net offer based on the bidder's priority list. If an offeror submits a bid on more than one property, the first of those bids that produces the best net offer to the government

will be accepted and all other bids from that offeror will be eliminated from consideration. If the prospective owner-occupant purchaser submits the only acceptable bid on another property, without providing a priority list, then that bid must be accepted as if the bidder wishes to purchase all properties for which a bid was submitted. All participating brokers must be made aware of this policy.

n. Opening Bids.

(1) All sealed bids will remain sealed and safeguarded until the specified public opening date, which normally is the first business day following the specified listing period. The bids will be opened publicly at a time and place designated by the district office. A public bid opening is defined as a bid opening available for attendance by the general public and may be at a location within a district office or at other places deemed appropriate by the district.

(2) Each bid will be announced when opened, and acknowledgment made of the apparent highest net offer to the government. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Official acceptance of a bid is final and effective only upon the government's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent. Formal government bid acceptance and certified mail procedures should be established to ensure proper and effective notification to successful bidder,

(3) All bids not accepted will be promptly returned to the broker by mail. The earnest money deposit will also be returned, either by the district office or the broker, as applicable. Copies of all bids will be retained by the district for purposes of record keeping and to provide a means for communication with unsuccessful bidders should the successful bidder for any reason fail to close on a particular property or to notify bidders of additional properties available for HAP resale.

o. Counteroffer. In cases where all bids received on a property are unacceptable, a district office may, after rejecting and returning all bids and earnest money deposits, notify all bidders or their brokers, including any bidders who have submitted unacceptable bids during the listing period, the government would be willing to accept an offer equaling a predetermined net acceptable price. Bidders must submit an acceptable offer before the newly established bid cut-off period, to be determined by the district office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the original bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, awarding a sales contract will be determined by a drawing. All drawings to determine the successful bidder will be open to the public during the bid opening. Written notification of the successful offer will be provided to all bidders.

p. Closing.

(1) Time Allowed for Closing the Sale. The number of days allowed to close the sale of a property generally will not exceed 60 days from the date of acceptance of the offer to purchase, and will be set by the district office depending on the amount of time necessary in the area to obtain financing.

(2) Extensions. In the event a scheduled closing cannot be met for reasons beyond the purchaser's control, an extension period will be appropriately granted where the district has reason to believe the sale will close within a reasonable time. A request for an extension must be submitted in writing.

(3) Closing Agent.

(a) The government will provide a closing agent with qualifications as required by state and local laws to ensure the government's interest are protected. The closing agent may be a district employee or bonded representative as set for in this section.

(b) Although it may be legally acceptable in some jurisdictions for the closing agent to represent both purchaser and seller, purchases, may, at their own costs, obtain representation, if desired.

(c) If required by the district, the closing agent's functions may include reviewing and ordering title information, preparing and recording deeds and related documents, explaining all closing papers and documents to the purchaser, administering requests for closing extensions, providing estimates of closing costs, and collecting and disbursing funds related to the sale.

(4) All assessments, including improvement assessments that are available form payment without interest of penalty for advance payment, taxes, rent, and ground rent, if any, will be prorated between the government and the purchaser as of the date of the closing. On assessments for which a payment plan has been approved, only assessment amounts required to be paid during the current tax year will be prorated, with the following year's payment to be the responsibility of the purchaser.

q. Property Damaged After Sale, Before Closing. The government assumes the risk of any damage or loss to the property occurring after acceptance of the sales contract and before closing, provided the damage or loss is not the fault of the purchaser. Any substantial damage after the effective date of the sale contract, but before closing, may be authorized for immediate repair, at the government's option, or the government may reduce the sale price as a result of the damage. The purchaser has the option to cancel the sales contract, with all earnest money deposits refunded.

r. Occupancy before Closing.

(1) General Policy. Occupancy of the property by the purchaser before closing is prohibited, except where authorized on a case-by-case basis under the following circumstances:

- (a) When failure to permit occupancy would create an extreme hardship on the purchaser;
- (b) Where permission to occupy is necessary to meet competition; or
- (c) Where occupancy would protect against vandalism and theft.

(2) Occupancy under Lease Agreement.

(a) If occupancy before closing is permitted because it would protect the property against vandalism and theft, occupancy will be rent-free or at a nominal rate in exchange for caretaker services that the purchase agrees to perform.

(b) If occupancy before closing is permitted solely to meet the needs of the purchaser, full market rent will be required, and the purchaser will be required to assume the risk of loss in the event there is damage to the property before closing.

s. Rental of Acquired Property.

(1) General Policy – Leases. Leasing of acquired property will be as a last resort in determining management of HAP resales. However, it is an authorized management option when the district determines that it is in the best interest of the government or as local market conditions warrant. Leases

may include an option to purchase in appropriate circumstances. Situations where the government will lease priority include, but are not limited to, the following:

- (a) A sale closing is delayed extensively;
- (b) Occupancy is essential to prevent vandalism or rapid deterioration of the property;
- (c) The inventory in an area exceeds sales market absorption capability for an extended period of time;
- (d) The property is a one or two family dwelling and occupancy would improve marketability;
- (e) The property is leased a temporary housing for disaster victims;
- (f) The property is leased by other government agencies for defense, law enforcement, or other purposes; or
- (g) The property is leased by a nonprofit organization or governmental entity, including a public housing authority.

(2) Tenant Selection. In selecting tenants for any lease program, discrimination by race, color, religion, sex, national origin, age, familial status, or handicap is prohibited.

(3) Preparation of Leases. Leases will be prepared in accordance with local requirements as well as applicable Federal laws and regulations. Rental will be appropriately charged and clearly cited in the lease document and receipts will be deposited in the HAP account. Public Law 89-754 is the leasing authority.

(4) Conditions of Occupancy.

(a) Lease Term and Rent. The lease term and the amount of the rent are dependent on the circumstances under which the property is leased. The fair market rental value will be based upon the basis of change. Appropriate other forms of compensation in lieu of the fair market value are also authorized on a case-by-case basis when it will prove beneficial to the government. Terms will generally be on a month-to-month basis and revocable at will by providing a 30-day notice.

(b) Continued Occupancy.

(1) The government will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action, in any of the following situations:

- (a) Failure of the tenant to execute a lease, or to comply with the lease;
- (b) Failure of the tenant to allow reasonable access to the property upon proper notice;
- (c) Necessity to prepare the property for sale; or
- (d) Assignment of the property by the government to a different use or program.

t. Competitive Sales Procedure.

(1) General. Properties are sold to the general public on a competitive bid offer basis through local real estate brokers. Properties are advertised in the area in which they are located through appropriate media. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it will remain on the market for an extended listing period, as described in this section.

(2) Qualified Purchaser.

(a) Anyone, regardless of race, creed, color, religion, sex, national origin, familial status, age, or handicap may offer to buy a government-owned property acquired under HAP; and

(b) Except as provided below, tenants in occupancy will not be offered the right of first refusal to purchase the property. They may submit an offer, or bid, to purchase the property when it is publicly listed, which will be treated in the same manner as other offers received from other prospective purchasers during the listing period.

(c) Tenants in occupancy will be offered the right of first refusal to purchase the property where:

(1) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to the Corps to be offered the right of first refusal; or

(2) State or local law requires that tenants be offered the right of first refusal.

(3) List Price.

(a) All initial list prices will be no less than the current FMV as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market in the market impact area.

(b) Properties that fail to sell within a reasonable period as determined by the district should be reanalyzed and the price may be reduced by the district.

(4) Financing. The purchaser is entirely responsible for obtaining financing for purchasing a property.

(5) Open Listings. Properties may be sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with DOD regulations and requirements may participate in the sales program. Purchasers participating in the competitive sales program must submit bids/offers through a participating broker. Offers for groups of properties available for bulk sales may be submitted directly to the district.

u. Closing Agent Contract. District offices may contract for the services of a closing agent. This contract must include the following elements:

(1) Liquidated Damages. A provision calling for an established daily amount of liquidated damages for each day the sales closing package is delivered beyond the date specified in the sales contract. There must also be a damages provision involving the late delivery of the sales proceeds due the

government. If either or both of the liquidated damages provisions become effective for a specific case, the closing agent shall attach to the closing package their check for the full amount(s) due.

(2) Bonding. The closing agent is required to obtain bonding in an amount equal to the value of the cases assigned by the government during a normal two-month period. The bond may be surety or fidelity, provided the government is fully protected against acts involving misappropriation of funds by the principal, employees of the contractor, and any subcontractor the closing agent may be utilizing. The bonding is required to be in place prior to contract award.

(3) Closing Date. The district office or closing agent shall establish a firm closing date within the time specified in the sales contract.

(4) Preparing the Closing Package.

(a) District offices should provide closing agents with all necessary documents and information needed to close a sale, including the following, in sufficient time to permit preparation for closing:

- (1) Title evidence.
- (2) Executed deed from the government.
- (3) Tax information.
- (4) Copy of lease, if applicable.
- (5) Rental status, if applicable.
- (6) Utility bills, if applicable.

(b) Closing documents should, whenever possible, be picked up personally by the closing agent. If closing documents must be mailed, the appropriate government procedures must be followed. Method of transmittal must be used that provides positive proof of receipt.

(5) Closing Agent Responsibilities.

(a) Completion of Documents. The closing agent shall complete all documents in accordance with the contract requirements. These documents may include, but are not limited to the settlement statement, promissory note, and trust deed or mortgage.

(b) Establishment of Escrow Account. The closing agent shall establish a separate escrow account for all proceeds in the name of the closing agent, with the restriction "As Trustee for the United States of America". The escrow account must be established in a federally insured bank that gives credit for the deposited check immediately upon clearance. Exceptions to this requirement are: infrequent closing in remote areas, closing being handled by district staff, and where formal contracts for closing services are not required.

(c) Accounting Records. The closing agent shall maintain complete and accurate accounting records which, as a minimum, include a cash receipts and disbursement register. This register will be reconciled monthly to the bank account. For each receipt and disbursement, the register must identify, by address and case number, each property to which the receipt or disbursement applies and the

purpose for each disbursement. Review of the register will be performed by the district office during each on-site review.

(d) Status Report of Cases Assigned. The closing agent shall provide a status report as required by the district.

(e) Purchaser's Inspection. The completed settlement statement must be made available to the purchaser for inspection, upon request, on the business day preceding settlement.

(f) Receipt of Deposits and Payments. The closing agent is responsible for obtaining from the purchaser the amount due to close the sale at the time of closing. All funds paid by the purchaser must be in cash, certified funds, cashier's check, or check drawn upon a mortgage lender or attorney's escrow account made payable to the closing agent. The closing agent shall deposit these funds in the escrow account on the day of closing or the next banking day.

(g) Authorized Payments from Proceeds. Payments for the following expenses are to be made from the closing agent's escrow account. If funds are not available from the proceeds to pay any of the authorized expenses, the closing agent is to submit an invoice for each individual expense to the district office along with the closing documents.

(1) Sales commissions in the amount specified in the sales contract and any authorized bonus to the sales broker. Reflect this payment on the settlement statement.

(2) Accrued utility bills of former owners or tenants, if the bills are or will become liens against the property, or if restored and continued service is contingent on payment.

(3) Refunds. Payments made by purchasers for closing extensions may be refunded in accordance with the terms specified by the district.

(4) Credits. Credits given to the purchaser for services, repairs, or other items negotiated between the district and the purchaser.

(5) Miscellaneous closing expenses, such as closing agent's fee, unless paid under other arrangements and any other such expense agreed to or approved by the district office.

(h) Transfer of Sales Proceeds. No later than the next banking day after sales closing, the closing agent must send all funds to the district office, either by hand delivery, express mail or electronic transfer. Closing agent must obtain confirmation.

(i) Forwarding Closing Documents. A facsimile of the executed closing documents must be received in the district on the day of closing. All original closing documents must be forwarded to the district office within the time frames stated in the closing agent's contract. Such time frames must conform to the overall requirements that the certified closing documents be received by the district office within 14 calendar days from the date of closing.

(j) Recording Sales Documents. The closing agent must ensure that the deed, note, deed or trust (mortgage), and all other documents that require recording are recorded immediately following closing.

(k) Monitoring Closing Agents' Contracts. The district office must carefully monitor closing agents to ensure that closings occur within the proper time frames; sales proceeds are sent to the

district offices in accurate and timely manners, and closing documents are forwarded to district offices within the times required by the contracts.

(1) Review of Assigned Closing Status Report. Review the report to ensure the closing agents are properly closing sales and whether any delay or failure to close is the responsibility of the closing agents.

(2) Delayed Deposit of Proceeds. When the district office learns that funds for a closed case were not sent promptly, the closing agent should be contacted immediately. Determine the cause for the delay, verify that the mailing has taken place, remind the closing agent of the contractual requirements and, where appropriate, demand the applicable liquidated damages. If the situation is not resolved satisfactorily within a short time, do not assign additional closing to the agent until the problem has been resolved. Where appropriate, contact the district office counsel, Inspector General and bonding company, advising them of the situation.

(3) Corrective Action. Appropriate corrective action and measures must be taken to ensure closing agent compliance with all contractual responsibilities.

(4) Periodic Reviews. Periodic on-site reviews of each closing agent's records and procedures will be conducted. A checklist for monitoring closing agents during each review will be completed. The review findings will be maintained in the district office file.

(5) Review and Approval of Closing Documents. All closing documents are to be reviewed, corrected and certified by the district office as soon as possible after their receipt. In conducting the review the district office shall assure:

(a) All applicable closing documents show the correct HAP case number.

(b) The sales price, earnest money deposit, sales commission, settlement costs, and any additional costs authorized by the government sales contract are accurately recorded on the settlement statement.

(c) If earnest money was deposited in the district office, the full amounts of such deposits are shown on the settlement statement.

(d) The full amount of any extension fee and the amount of any refund are shown on the settlement statement.

36. Management and Resale Options. The specific procedures for management and resale of acquired properties should be tailored to the particular requirements of individual projects and the resources available to the district to accomplish the mission. USACE will manage and sell acquired properties or contract for such services in a manner consistent with, but not limited to, the following: transfer to other government agencies and direct sales; management and resale by USACE' and management and resale by private contractors.

37. Transfer to Other Government Agencies or Direct Sales. Transfers to other government agencies may be necessary for certain projects as required by law or special legislation, and to provide relief to or in cooperation with other government projects. Direct sales may be pursued, at discounts, to other entities listed below for purposes of providing assistance to local communities or to expedite sales of hard-to-sell properties.

a. Transfer. Transfer of acquired properties to Federal agencies will be in accordance with agreements, if any, between DOD and the respective agency. Transfer of acquired properties will not be made to governmental agencies with prior approval from CEMP-CR. Full justification and plans for transfers will be submitted for approval.

b. Direct Sales. At the discretion of the district, direct sales may be authorized as follows:

(1) Direct sales to Federal agencies, private nonprofit organizations, state and local governments, and public agencies, may be accomplished for use in HUD and local housing or homeless programs. Sale discounts will be determined on a case-by-case basis in accordance with the particular program authorizing the conveyance. The amount of the discount will be that amount necessary to expedite sales in depressed markets and to reduce the government's inventory of HAP properties.

(2) Direct sales to displaced persons.

(a) At the discretion of the district office, properties may be offered for direct sale, at a discount, to displaced persons who will occupy the properties. Properties offered will be only those in the general area in which the displacement is occurring.

(b) For purposes of this section, "displaced person" means any household (family or individual) that moves permanently and involuntarily as a direct result of:

(1) Acquisition, rehabilitation, demolition or code enforcement for a government (Federal, state, or local) project or government-assisted project.

(2) A determination that the income of the household exceeds the limitations for government-assisted housing that the household occupies; or

(3) A major disaster, as declared by a state or Federal government.

38. Management and Resale by USACE.

a. Management by USACE. Management of acquired properties may be performed by contract. Districts have been delegated the authority to utilize USACE or installation personnel to perform maintenance and management functions if, in the opinion of the district commander, such utilization is in the best interests of the mission. Such management functions may include, but are not limited to:

(1) Participation in joint inspections,

(2) Security of and winterizing properties,

(3) Installation of signs and warning notices,

(4) Coordination with local utilities, homeowners associations, local law enforcement authorities, and other agencies as required by law or regulation,

(5) Care, maintenance, and repair of the property,

(6) Rental of properties prior to resale,

(7) Periodic inspection of property, at least monthly,

(8) Other management functions as determined by the district commander.

b. Rental of Acquired Property.

(1) Leases. The authority for leasing is Public Law 89-754, 42 U.S.C. 3374(d). See subparagraph 35s.

(2) Management of Rental Properties. Management of rental properties, unless in small quantities or otherwise infeasible, may be by property management contractors obtained through and invitation for bids/proposals process. No contract will be awarded to businesses otherwise associated with resale of HAP properties because of the conflicts it will present in selling versus rental by the same contractor. A contractor wishing to slow the resale program to continue receiving funds under a rental management contract may impede the government's goal of a fast resale.

c. Resale by USACE.

(1) Sales through Real Estate Brokers. USACE is charged with the responsibility of obtaining the maximum recovery of its investment in all properties. HAP properties may be sold to the general public on a competitive basis through participating real estate brokers. All licensed real estate brokers in the program area will be notified that they may, by directing a letter to the district office, with a photocopy of their broker's license, and by signing a nondiscrimination agreement, be placed on the direct mailing list for sales of all properties in the area of interest. Brokers will be furnished with keys or other method of access upon their approval and execution of a participation agreement. Brokers will be required to sign a participation agreement detailing whom they represent and the requirements and obligations of all parties. A home sales guide will be developed by the district for each project and furnished to each participating broker to be used as a reference in implementing the resale program.

(2) Open Listings. Properties sold through an open listing program will be available to all brokers approved for participation.

(3) Notification of Listing. A complete listing of all properties available for sale is mailed simultaneously to all participating brokers on a nonexclusive listing basis as the properties are acquired. All brokers have an equal opportunity to inspect, show, and submit offers to purchase. The district will notify all participating brokers of the dates the properties will be advertised, dates for accepting bids, the bid opening dates and locations of bid openings.

(4) Advertising. USACE will solicit bids by actively and publicly advertising all available properties to ensure the broadest practicable coverage via newsprint, posting of notices in public places and/or other media the district deems appropriate. Participating brokers may advertise HAP properties at their expense without cost to the government. Any broker advertising in newspapers or elsewhere shall not use wording that would tend to indicate distressed sales or foreclosed loans. The phrase "Equal Housing Opportunity" must be inserted in every advertisement of HAP properties for sale. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it may remain on the market for an extended listing period. The length and conditions of the extended listing period will be as determined appropriate by the district for accomplishing the HAP resale mission.

39. Management and Resale by Private Contractor. This paragraph sets forth responsibilities, procedures, methods and guidance for the contracting of management and resale services for acquired HAP properties. Districts may use this paragraph to develop a management and resale program to provide for contracting for part of all of the required service to accomplish the HAP mission.

a. Property Management by Contract.

(1) Policy. USACE may contract for the management of all acquired HAP properties. The terms Property Manager (PM) and Management Broker (MB), as used herein, are synonymous. Instructions in this chapter regarding either the PM or MB apply equally.

(2) Determination of Need and Area. The district office must recognize situations which dictate the need for contracting MB services and comply with the Federal Acquisition Regulations (FAR) and this chapter in obtaining these services.

(3) Training MBs. Within 30 days of contract award, the MB must be trained and/or provided instruction on at least the following:

- (a) Contract services the MB is to perform or obtain.
- (b) Preparation and submission of all required forms.
- (c) Policies and methods of disposition.
- (d) Procurement of supplies, materials, repairs, and services.
- (e) Policies and requirements for repair programs.
- (f) Determination of property values.
- (g) Determination of property condition.
- (h) Accounting procedures and requirements.
- (i) Causes for contract termination.

(4) PM Responsibilities. The PM will be required to perform services which include managing one- or two-family homes (including condominium units) and all improvements located on the property assigned by the district, including maintenance, repairs, and reporting. Management objective is to maintain the acquired properties, keeping them clean and ready for sale in the local real estate market.

(5) Supervision and Monitoring of MBs. The overriding responsibility of the district is to supervise and monitor the activities of the MB. To properly fulfill this responsibility and ensure that the government is receiving proper return for its management contract expenditure, the following must be performed on a continual basis:

(a) Review Documents Submitted by the MB. Determine that each form required of the MB is submitted on a timely basis, contains essential and accurate information, and the recommended prices and methods of sale are reasonable and in keeping with current policy.

(b) Inspection of Properties. Conduct field inspections, as warranted, of properties assigned to the contractor. It is recommended that a minimum of ten percent of the properties receive these inspections. Increase inspection, up to 100 percent, if necessary, where it is found that the contractor's performance is deficient.

(c) Review of MB.

(1) Quarterly. The MB's office records and procedures must be reviewed on a quarterly basis. Each review must include individual property files, and fiscal documentation and records. Based on performance, the review may include adequacy of staff, supplies, facilities, inventory controls, status records, follow-up systems, comparable data, and general office conditions. Problem areas/deficiencies are discussed with the MB and a follow-up on previous deficiencies is conducted.

(2) Annually. The district is to perform in-depth evaluation of each MB annually.

(3) As Warranted. As the district is directly responsible for ensuring proper and adequate MB performance, the district must visit and work with the MB when inadequate or deteriorating performance is noted. It is extremely important that each visit be documented.

(a) Review Monthly Accounting Reports:

- Determine broker's figures agree with total collections and disbursements.
- Check cash reconciliations and accuracy and correctness.
- Verify correctness of voucher.
- Forward payment request within four days.

(b) Document Unsatisfactory Performance.

- Document inadequate performance, including incorrect or incomplete forms. Place documentation in the district's MB's file.
- Compare MB's performance to other MBs working at other locations.
- Discuss deficiencies personally with MB. District file should contain documentation of any instruction, guidance or monitoring provided each MB.
- Provide written documentation to MB regarding unsatisfactory performance items and corrective measures to be taken by the MB. Retain copy for MB's file.
- Follow-up on previously noted deficiencies.
- Provide additional training as necessary.

(c) Termination of MB Contract. When the MB, after reasonable time and assistance, fails to correct unsatisfactory performance, it will be necessary to terminate the contract. It is vital to any termination effort that the documentation identified above is maintained and it reflects the efforts made to achieve a turnaround of the MB's performance. Documentation should reflect that the MB received proper notice by personal discussion and by letter detailing performance deficiencies and prescribing a schedule for correction. Unacceptable performance must be reflected in inspection reports, letters to the MB, documentation of discussions, and work sheets measuring performance. It is the responsibility of the district to bring to the attention of the contracting officer those instances of continued or repeated non-compliance by the MB and to recommend actions to be taken, including termination where deemed appropriate. The decision to terminate will be made in accordance with the terms of the contract. Appropriate use will be made of administrative sanctions in the property disposition program in strict accord with 24 CFR Part 24. Areas of concern for irregularities include any procurement contract

for goods and services between the government and MBs, repair contractors, selling brokers and purchasers.

b. Management and/or Resale by Contractor.

(1) A district office may invite firms experienced in property sales and management to compete for contracts that provide for an exclusive right to manage and/or list specified properties in a given area. This procedure is in lieu of management and resale by USACE as it will provide for administration of property management and resale by contract. In determining whether to enter into an exclusive contract, the district office will consider its staff resources, local market conditions, and location of properties.

(2) The contractor will provide a variety of management and/or resale services to assist the government in managing the properties prior to sale. The duties of the contractor may include: selling the properties, advertising the properties in a manner approved by the government, showing the properties to prospective purchasers, helping purchasers prepare and submit purchase offers and qualify for mortgages, explaining to purchasers the steps required to close the sale, providing the district office with a report on the reasons the properties have not sold after a reasonable period on the market, submitting bids/offers to the government on behalf of prospective purchasers for acceptance or rejection, coordinating closings, and managing rental properties. A competitive process is required as in other resale methods to offer the general public the right to make offers in a fair and equitable manner.

(3) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his/her choice. At the district's option, the purchaser's broker must submit the bid/offer to the government directly or through the exclusive broker.

40. Other Sale Procedures.

a. Razing for Lot Sales. The government will raze property and sell the vacant lot if required by local ordinance or agreement, if it is determined to be in the best interest of the government. As an alternative, the government may sell the property with the requirement that the purchaser raze the property after the sale. Specific requirements for demolition of improvements will be included in the sales contract in such cases. Properties may be razed for sale of the vacant lots, if one or more of the following conditions exist:

(1) The property has already been unsuccessfully offered for sale in its "as is" condition.

(2) A local ordinance or agreement prohibits "as is" sales of such properties.

(3) The property must immediately be razed to remove a health or safety hazard.

(4) Damage beyond repair of the cost of repairs exceeds the value.

(5) The district determines it is in the interest of the government to raze the property for sale of the underlying property.

b. Bulk Sales. The government may occasionally make groups of properties available for bulk sales in "as is" condition. Bulk sales of properties may be limited to governmental entities and private, nonprofit organizations for a specific purpose. The terms and conditions for a particular bulk sale will be described fully in any public notice of the sale.

(1) General Features. Designed to boost sales in weak markets, the all cash “as is”, bulk sales program features:

- (a) The option to publish or not to publish the listing price.
- (b) The requirement for purchasers to provide their own financing.
- (c) Offers may be submitted directly to the district.

(2) Property Selection. Eligible properties include “as is” properties and vacant lots. Generally, properties should be marketed individually prior to being offered in bulk. However, this is not always practical. A bulk offering containing properties that have proven to be hard-to-sell could logically include new acquisitions which are comparable with regard to location and physical characteristics, but which have not been offered individually. This rational may reasonably be extended to broader areas, e.g., to specific neighborhoods. In addition, better properties may be included in a bulk package of predominantly less attractive properties, if doing so would enhance the properties overall marketability.

c. Auctions. Districts may sell properties at public auction in lieu of other resale methods. In determining whether to hold an auction, consideration should be given to: the type and number of properties to be sold, property value, location, anticipated public interest, and administrative costs. Terms and conditions of the auction sales will be announced in the public notices of the sales. Auction sales may be accomplished by a contractor licensed in accordance with laws and regulations in the state and local community in which the property is located, or by qualified USACE employees. Procedures for holding public auctions by USACE personnel will be in the spirit of fair competition and within applicable guidelines for the open bidding process. Auctions by contractors will be governed by the following:

(1) General. A professional auctioneer may be contracted by the government to hold an auction for resale of HAP properties. If the auctioneer is a licensed broker in the jurisdiction of the properties to be sold, he/she may function in that capacity. If the auctioneer is not a licensed broker, he/she must enter into an agreement with a licensed broker who will act in the auctioneer’s behalf to show properties prior to the date of the auction and perform such other functions only a licensed broker may perform. To the extent that other selling brokers are used, it is the responsibility of the auctioneer to compensate them.

(2) Contract with Auctioneer. All services performed by the auctioneer must be set forth in a contract.

(3) Soliciting Auctioneers. Auctioneers must be solicited in accordance with the FAR.

(4) Bid Basis. If bid basis is percentage of sales, inform all prospective auctioneers the approximate total value of the offering. Where competitive negotiation is permitted, the fee should not exceed eight percent of the total amount received. It must be clear in the solicitation whether the auctioneer must pay advertising costs out of his/her commission or whether the government will provide an allowance for that and other expenses.

(5) Broker Compensation. The sales commission will be paid under the provisions of the contract. If the auctioneer permits the participation of other brokers, it is his/her responsibility to establish the terms for this participation and to compensate the brokers.

(6) Advertisement. Auctioneers may arrange for, procure and/or place all forms of advertising, subject to government approval. Advertisements should have all essential information, such as, how the

property may be shown, time, date and location of auction, list of properties, earnest money requirements, a statement as to whether properties are being offered individually or in bulk, the terms and conditions of sale and essential rules of the auction, a statement that the property must be viewed through a local broker, and a statement that the government reserves the right to reject any offer unless the auction is absolute.

(7) Costs. All costs, including advertising and fees for auction personnel should be included in the price ultimately arrived at in the contract. However, the district office may elect to extract the advertising costs, providing a separate allowance for it. A cost or price analysis will be made prior to execution of the contract along with a determination that the contract price is reasonable.

(8) Competition at Auctions. The contract must provide that the auctioneer cannot use unduly restrictive procedures or standards that tend to limit competition at the auctions. The auctioneer, as part of the contract agreement, must sign a nondiscrimination certification.

SECTION X. APPEALS

41. Appeals Policy. Section 1013(f) of the Act provides that the provision of the Act will be administered in conformity with the requirements contained therein and under such conditions and regulations as the Secretary of Defense may prescribe, and that all determinations and decisions made pursuant to such regulations shall be final and conclusive and will not be subject to judicial review. The Administrative Procedure Act does not apply.

42. Authority. The Secretary of Defense delegated to the Secretary of the Army the authority to establish an appeals procedure, with responsibility for final action assigned to a designated component of the Department of the Army. Accordingly, the appeal procedure in this section has been established. Authority to take final action on appeals has been vested in the DASA(I&H).

43. Notification to Applicant.

a. Notification of Decision. Each applicant will be notified of the decision made on his/her application and the reasons for such action.

b. Information to be Included. The letter to the applicant providing notice of the decision should contain the following minimum information:

(1) References to the appropriate sections of the Act and the regulation under which the decision has been reached and the rationale for the decision.

(2) Notification of the applicant's right to question the district's decision, to then object to the decision, to have the MSC review the district's decision, and then file an appeal of the MSC decision. Applicants must be advised that an objection must be written and state the basis for the objection. Applicants should be further informed that, if the issue is one of value, they may submit a professional appraisal paid for by the applicant.

44. Objection Procedure.

a. A written question regarding the applicant's case will not be considered an appeal. The district will reply to the applicant and explain the government's decision and the basis for it. (Note the restriction of appraisals in subparagraph 22b. above.) This reply will explain that the applicant has a right to object

to the district's decision and have it reviewed by the MSC or accept the district's decision. A second appraisal will not be obtained unless an objection is received, forwarded to the MSC and the MSC decides to request a second appraisal.

b. The applicant may request the MSC review the district's decision. The MSC will review the objection with supporting documentation and reply to the applicant. The reply will explain the applicant may file an appeal from the MSC's decision(s) regarding benefits and/or eligibility. Applicants should be advised that an appeal will be considered by the district commander, the MSC commander, and CEMP-CR. If favorable action cannot be taken by one of those, the appeal will be submitted to the DASA(I&H) for final decision.

45. Appeal Process.

a. An appeal must be submitted in writing to the district within 180 days from the date of notice of the MSC's decision. The appeal must state the decision to which the applicant is objecting and the basis for the objection with supporting documentation. The applicant may be represented by an attorney or other person, if applicant so chooses.

b. The district will review the applicant's appeal, and prepare an appeal package with recommendation to be submitted to the MSC.

c. Appeals will be considered at the district level, and will be reviewed at the MSC level. A determination will be made at each level as to whether favorable action can be taken. An appeal which has been forwarded to a higher level of review may not be settled at a lower level without concurrence of the highest level to which the appeal has been transmitted.

d. If favorable action cannot be taken, CEMP-CR will forward the appeal to the DASA(I&H) for further review and final decision.

46. Appeal Procedure.

a. Investigation. Any decision objected to by the applicant will be investigated by the district.

(1) The investigation will be as extensive as necessary to clearly define the basis for the objection/appeal and to gather required information for its consideration.

(2) Upon completion of the investigation, the information submitted with the application will be reconsidered, together with the information gathered as a result of the investigation, and a determination made as to whether favorable action can be taken.

(3) For appeals, a signed report of the investigation and consideration will be prepared which will include the following tabbed headings:

(a) Applicant's Claim: A brief outline of the basis of the application for assistance, the initial decision by the district, the applicant's objection, and the MSC's decision from which the applicant has appealed, and the basis for the applicant's appeal. Copies of the benefit sheet and settlement sheet should be included, if applicable.

(b) Issue: A brief statement of the matter to be resolved.

(c) Finding and Decision: The scope of the investigation and consideration of the appeal, pertinent information necessary to determine the merits of the appeal, an Attorney's Opinion for eligibility appeals, the decision on the appeal.

(d) Besides review and certification of the appraisals for the appeal, an analysis of the applicant's appraisal issues should be included in the review.

(e) Recommendations.

(4) The district will notify applicant when appeal is forwarded to higher authority for review.

b. Forwarding of Appeals. If favorable action on an appeal cannot be taken by the district, a tabbed appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to CEMP-CR. A copy of the appeal containing original papers will be returned to the district after a decision on the appeal has been reached. The appeal assembly will have a jacket cover of heavy paper backing with a suitable fastener at the top. It will consist of the following items, assembled in the order shown below, with such variations or additions as circumstances require.

(1) Investigation and consideration report,

(2) Written appeal and amendments,

(3) Application with attachments,

(4) Appraisal reports, if appropriate,

(5) Settlement sheet for appraisal issues,

(6) Pertinent correspondence in chronological order,

(7) District's Attorney's Opinion, and

(8) Other documents or information with significant bearing on applicant's claim for assistance.

47. MSC Review of Appeal. This review is to ensure the following:

a. Compliance. The initial decision is in accord with the facts, the provisions of the Act and existing regulations;

b. Notification. The applicant was properly notified as to the reason that favorable action could not be taken on his/her application; that he/she has filed an appeal from this decision and has submitted all of the information he/she intends to submit in support thereof;

c. Decision. The district commander's decision on the appeal is supported by the record; and

d. Necessary Information. The appeal assembly contains the necessary information in support of the decision and has been assembled as outlined in this section.

48. MSC Action on Appeal. MSC action will be taken as expeditiously as possible. If the MSC concurs with the recommendation, additional comments and recommendations, together with reasoning and

supporting documents if appropriate, will be forwarded to CEMP-CR. If the MSC does not concur with the district commander's recommendation, the matter will be returned to the district for further consideration or with a directed solution. If the appeal is forwarded to CEMP-CR for further review, the MSC will so notify the district.

49. CEMP-CR Action on Appeal. CEMP-CR may either:

- a. Return the appeal for further consideration or with a directed solution, or
- b. Forward to the DASA(I&H):
 - (1) The appeal package
 - (2) A proposed DASA(I&H) letter to the applicant denying the appeal
 - (3) A cover memorandum recommending the letter be signed and mailed to the applicant.

50. DASA(I&H) Action. The DASA(I&H) will make the final decision on an appeal based upon CEMP-CR recommendation. In the event the recommendation is not approved, the appeal will be returned to CEMP-CR for further consideration. If the recommendation is approved, the DASA(I&H) will sign the letter and have it mailed to the applicant.

51. CEMP-CR Final Action. If the DASA(I&H) has not approved CEMP-CR recommendation on the appeal, the matter will be reconsidered and, if possible, objections will be resolved at CEMP-CR level. Otherwise, the appeal will be returned to the MSC with appropriate instructions for further action. If the DASA(I&H) approved the recommendation, copies of the letter to the applicant and the memorandum opinion, including a copy of the appeal assembly with original papers, will be sent to the MSC and the case will be closed.

52. Decision Dissemination. Copies of HAP appeal decisions by the DASA(I&H) are not disseminated USACE-wide by CEMP-CR. A digest of the decisions may be made available to any district. The district may refer to such decisions but may not disclose them to applicants.

SECTION XI. INCOME TAX

53. Tax Consequences. HAP benefit payments up to the difference between 95% of the prior FMV and sales price or current FMV (greater of) are tax exempt based upon the Military Family Tax Relief Act of 2003, Public Law 108-121, effective 12 Nov 2003. HAP benefits in excess of the difference between 95% of prior FMV and sales price or current FMV (greater of) are considered to be payments, are taxable, and should be reported as gross income. Closing cost reimbursement should be reported as taxable income as well.

54. FICA Withholding. Applicability and Exceptions. HAP benefits in excess of the difference between 95% of prior FMV and sales price or current FMV (greater of) are subject to Federal Insurance Contribution Act (FICA) withholding. The amount of withholding, if any, is determined by the applicant's employment status when he/she became eligible to receive benefits. FICA is not withheld from members of the armed forces, since they pay taxes only on their basic pay. Civilian employees who belong to the Civil Service Retirement System are subject only to Medicare withholding, are not subject to the OASDI portion of FICA taxes. Civilian employees who belong to the Federal Employee Retirement System are subject to withholding for both OASDI and Medicare elements of FICA. If a

member of the armed forces is eligible for HAP benefits because of active duty status, no FICA is withheld, even if the benefit is received after the member retires. Any outstanding employee contributions for FICA must be paid prior to the time of closing of a government purchase of prior to a benefit payment on a foreclosure. This may be done by withholding reimbursable funds or direct payment by the employee prior to closing or prior to foreclosure payment. FICA withheld should not exceed the maximum annual limit.

55. Disclosure. Applicants should be informed that there are tax consequences of HAP benefits in excess of the difference between 95% of prior FMV and sales price or current FMV (greater of). Districts are responsible for providing complete disclosure to applicants on the taxability of HAP benefits, commencing with the town hall meeting and continuing throughout the processing of applications or appeals.

56. Taxable Benefit Calculation.

a. Benefit Payment. For private sales, the taxable benefit is the amount actually disbursed to the applicant that is in excess of difference between 95% of prior FMV and sales price or current FMV (greater of). This calculation excludes closing costs that are considered to be a non-taxable reimbursement.

b. Foreclosures and VA Compromises. For foreclosures, the taxable benefit is the amount actually disbursed, whether to the applicant or to third parties, to discharge the applicant's foreclosure related liabilities that are in excess of difference between 95% of prior FMV and sales price/adjusted sales price or current FMV (greater of).

c. Mortgage Assumption. Mortgage assumptions are taxed in the same manner as government acquisitions.

d. Government Acquisitions. For government acquisitions, the taxable benefit is the amount in excess of difference between 95% of prior FMV and sales price or current FMV (greater of). Excluded from this 95% calculation are reimbursements for taxes, interest and insurance premiums paid by the applicant, as well as closing costs paid by the government.

e. Taxable Liability. For mortgage assumptions or government acquisitions, the applicant should be notified of the taxable liability of the transaction.

57. Tax Obligation Payment. Federal income tax and FICA (when applicable) will be withheld or collected as follows:

a. Withholding from Benefit Payment. Taxes due must be deducted from benefit payment made to the applicant. When the payment to an applicant is insufficient to meet the overall tax and FICA liability, the amount of the FICA will be withheld first from the payment. The applicant must pay the entire FICA portion of the taxes due prior to closing or paying-off enforceable liabilities.

b. Taxable Benefit Reporting. The amount of the taxable benefit will be reported to the IRS and the applicant.

58. Reporting. Any taxable HAP benefit received directly or indirectly by the applicant will be included in gross income on a W-2, Wage and Tax Statement. The total value of benefits will be shown in boxes 10 and 16 of the W-2. A separate W-2 reflecting only HAP benefits may be provided in lieu of including

HAP benefits on the beneficiary's regular W-2. A form 1099-S must be provided to the applicant and the IRS.

SECTION XII. FILES AND REPORTS

59. Policy. District offices will use a standard filing procedure that can be easily audited. The procedure must facilitate up-to-date records for district office actions based on thorough documentation, retrieval of specific information in the event of a dispute or complaint, or review by MSC and HQUSACE staff. All HAP personnel must be knowledgeable of the filing system.

60. Manual Property Records and Files.

a. Individual Property File. Correspondence, forms and related material must be filed in chronological order. A strict sign-out control system must be maintained for property case files.

b. File Maintenance. Active files must be maintained by property address, name or by application number. Once completed, acquisition and management and resale files will be merged and filed by application number.

c. File Disposition. Files will be maintained with the Modern Army Record Keeping System (MARKS). The MARKS number for HAP is 405.

d. Files on Contractors. Contract files will contain the contracts, amendments, payments and related correspondence.

ADDENDUM 1

PRELIMINARY COST ESTIMATE

PRELIMINARY COST ESTIMATE	
Installation Name	
Installation Commander	
Installation POC	Name: Rank/Grade:
	Address:
	City: State:
	Email
	Phone:
Installation Service	
US Senate (Sr)	
US Senate (Jr)	
US Congress	
Population: Installation	
City	
BASIC INFORMATION	
Affected Population	
Expected Applicants (affected Pop X 20% X 50%)	
Average home value (Avg home values near installation)	
PROGRAM COST ESTIMATE	
Pvt Sale Est (Dif between 95% of PFMV & sales price	
Est # of Pvt Sales (64% X expected applicants)	0
Est cost of Pvt Sales (8% X avg home value) X (Est # Pvt Sales)	\$0
Govt Acq Estimate (Higher of existing mort.or 75% PFMV)	
Est # of Govt Acq (35% X expected applicants)	0
Est cost of Govt Acq (# acq X avg home value)	\$0
Est cost of reimb (e.g..tax, interest, etc.) (Avg monthly mort pmt X 3 months X #govt acq) - (1% avg home value X 25% #govt acq)	
Foreclosure Estimate (Amount of indebtedness)	
Est # foreclosures (1% of expected applicants)	0.00
Est cost of forecl. (Avg indebt. X # of forecl.) (avg indebtedness)	\$0
Administrative Estimate (Travel, Salaries, Title, Travel, etc.) (District estimated cost per applicant) (est cost per appl)	\$0
Property Management & Disposal Estimate (Interest, Taxes, Insurance, Sales, Maintenance) (15% of Acquisition Cost)	\$0
Total Cost Prior to Resale	\$0
Recovered from Resale (75% of Acq Costs)	\$0
Total Estimated Program Cost	\$0

ADDENDUM 3

MARKET IMPACT STUDY (SAMPLE)

1. **PURPOSE:** A description of the announced closure/reduction; the date of the announcement or study; the recommended “public announcement date”; the effective date of the closure/reduction; and the installation functions affected.
2. **INSPECTION:** The date of neighborhood inspections and source of information; e.g., realtors, appraisers, Chamber of Commerce, local government planning agencies, and installation personnel.
3. **SCOPE OF STUDY:** A description of the types and locations of properties included in the study with an attached area map.
4. **DESCRIPTION OF AREA:** An overall discussion of the environmental, economic and location factors of the area, including cities and communities affected by the announcement. Economic factors such as plant closings and other adverse economic impacts must be addressed.
5. **REDUCTION OR REALIGNMENT:**
 - a. The total number of installation personnel, and the number of personnel affected by the reduction segregated by officers, enlisted personnel, and civilian personnel;
 - b. The estimated number of homeowners affected by the reduction;
 - c. A discussion of the future of the installation population and housing, including new assignments which may offset the reduction;
 - d. Installation payroll, before and after the reduction, along with the effect on the services provided by or to the community.
6. **OVERALL ECONOMIC CONDITIONS:** Use the economic data to measure the effect, both actual and potential, of the closure on the labor force, population, and payroll of the communities around the base. This section describes the adverse conditions which have impacted the area prior to and as a result of the installation closure or reduction. Interest rates, available mortgage funds, and their effect on the market should be discussed.
7. **REAL ESTATE MARKET CONDITIONS:** See paragraph 8f (3) of ER 405-1-12 for the criteria that must be included.
 - a. Discuss the appraisals provided with the report and their significance. (See paragraph 21 for instructions on appraisals.) Normally the appraisals of individual houses should be obtained by contract with a local certified appraiser, who is a member of the local multiple listing service and one who has considerable experience appraising local residential properties.
 - b. (a) Discuss local real estate listings, sales, average prices and whether they are increasing or declining, average days on the market, and building permits issued during the last four year(s). Include charts tracking these changes, where appropriate.

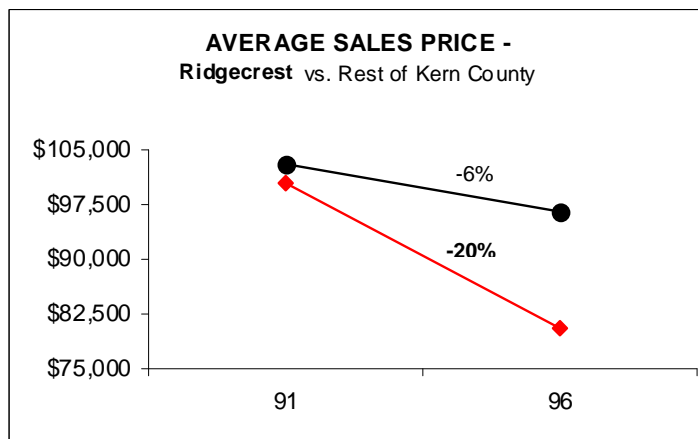
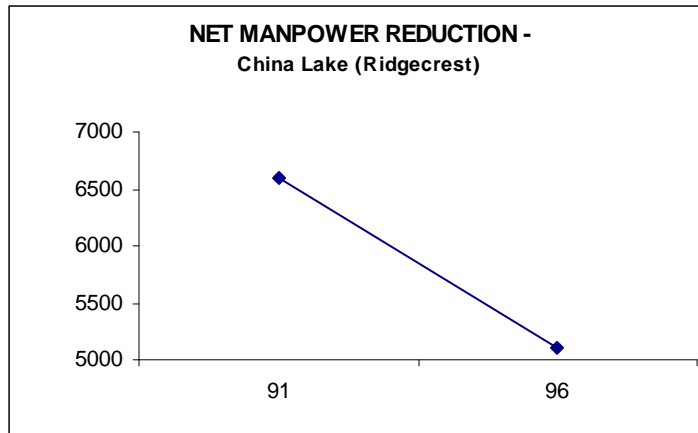
c. (b) Include a discussion of the effect of the closure/reduction on the rental market. Indicate whether foreclosures are increasing or declining, efforts, by agencies to avoid defaults, and efforts to market foreclosure houses.

d. (c) Comments from brokers and/or applicants.

8. CONCLUSIONS: A summary of the data supporting your recommendation.

NOTE: Confidentiality: Market impact studies prepared as pre-decision documentation for potential HAP implementation must be treated as privileged information, and should not be routinely released to the press or the public until the HAP decision is made. Release of HAP information is sensitive and should be coordinated with the Public Affairs Staff.

Date of report Name and title of preparer



Market Impact Study Example 1

I – Basic Information

Announcement Date:	13 May 2005		
Installation Name:	Johnson AFB	Population - 5,630	
Nearby City(s):	South Pole, WI	Population - 35,600	
Affected Population:	Total - 2,400	Military - 1500	Civilian - 900
Est. # of Homeowners:	Total - 900	Military - 100	Civilian - 800
SFR Housing Units:	1,000		
Area Avg. Home Value:	\$150,000		
Pre-announcement Trends:	Prices rose 10% during the first half of 2005.		

II – Background

Johnson AFB is a major employer in the town of South Pole. Also, it is estimated that about 10% of those that live in South Pole work at the base. A significant reduction of base personnel would certainly be expected to greatly impact real estate home values.

III – Evidence of a Negative Impact on Home Values

- 1 – Realtor Jane Deane stated that her 20 listings were reduced an average of 20% right after the announcement. Realtor Jake Pratt stated that his 15 listings were immediately reduced an average of 25%.
- 2 – Realtor Jane Deane stated that many of her sales in escrow were terminated due to buyer withdrawal right after the announcement.

IV – Evidence of a Causal Relationship

- 1 – A very significant manpower number, for this area (2,000,) were announced for permanent realignment.
- 2 – The negative impact on home values occurred within 30 days of the announcement.

V – Recommendation

It is recommended that approval be granted for a Homeowner's Assistance Program at Johnson AFB.

Market Impact Study Example 2

I – Basic Information

Announcement Date:	13 May 2005		
Installation Name:	River Army Depot	Population - 520	
Nearby City(s):	River, NV	Population - 1,600	
Affected Population:	Total – 520	Military – 50	Civilian - 470
Est. # of Homeowners:	Total - 75	Military - 1	Civilian - 74
SFR Housing Units:	45		
Area Avg. Home Value:	\$100,000		
Pre-announcement Trends:	Prices rose 10% during the first half of 2005.		

II – Background

River Army Depot is the major employer in the town of River, NV. This town greatly depends upon the Depot, and its closure would certainly be expected to greatly impact real estate home values.

III – Evidence of a Negative Impact on Home Values

- 1 – Realtor Jack Downey stated that the real estate market “ground to a halt” right after the announcement.
- 2 – Realtor Betty Smith stated that the two sales in escrow were terminated due to buyer withdrawal right after the announcement.

IV – Evidence of a Causal Relationship

- 1 – A significant manpower number, for this area (520,) were announced for permanent realignment.
- 2 – The negative impact on home values occurred within 120 days of the announcement.

V – Recommendation

It is recommended that approval be granted for a Homeowner’s Assistance Program at River Army Depot.

Market Impact Study Example 3 (Impact after significant # leave)

I – Basic Information

Announcement Date:	13 May 2005
Installation Name:	Acer Army Base Population - 7,500
Nearby City(s):	Anywhere, GA Population - 250,000
Affected Population:	Total - 7500 Military - 5500 Civilian - 2000
Est. # of Homeowners:	Total - 2500 Military - 500 Civilian - 2000
SFR Housing Units:	70,000
Area Avg. Home Value:	\$150,000
Pre-announcement Trends:	Prices rose 10% during the first half of 2005.

II – Background

Acer Army Base is a major employer in the town of Anywhere, GA. After 1500 personnel departed the area, real estate values in the Forest neighborhood (closest to the base), had fallen over 8%.

III – Evidence of a Negative Impact on Home Values

- 1 – MLS quarterly average sales prices were down 5%.
- 2 – Two base homeowner's homes had a sale-resale showing a loss of 8%.

IV – Evidence of a Causal Relationship

- 1 – A significant manpower number, for this area (1,500) have already left the area, with 1,000 scheduled to leave.
- 2 – A negative impact on home values occurred after about 1,500 had left the area.
- 3 – The town of Faraway, GA is located 60 miles east of Anywhere, and has little or no employees at Acer. Real estate home values have only fallen 2% in this area.

V – Recommendation

It is recommended that approval be granted for a Homeowner's Assistance Program at Acer Army Base.

ADDENDUM 4

PRIVACY ACT INFORMATION FOR HOMEOWNERS ASSISTANCE PROGRAM

The Homeowners Assistance program was authorized by Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754 (80 Stat. 1255, 1290), as amended. The Corps of Engineers administers the Homeowners Assistance Program. Individuals seeking benefits under the Act must file an application form (DD Form 1607) and, in addition, may be requested to furnish supplemental information to support their applications. The information requested will be used to identify the number of homeowners affected by the announced closure/realignment, and to determine the impact on the market, eligibility, and entitlement to specific program benefits. The application and supporting information will be retained for three years, except in appeal cases where the record is considered permanent. Information disclosed by applicants will be treated on a confidential basis and will not be disclosed except to personnel in the Department of Defense who have a need for the information. Sale of the property to the government and the amount thereof is also reported to the Internal Revenue Service (IRS). Deeds of conveyance to the government, which may contain data on mortgages assumed, and other documents relating to sufficiency of title, are furnished to the Department of Justice for review. Information contained in the application form and supporting documents is furnished voluntarily; however, if all required information is not furnished, eligibility for benefits may be affected and benefits may be denied. Benefits under this program are considered "wages" for tax purposes. The Social Security Number on the application is for identification purposes and is used to report to IRS the sale of the property to the government and to report withholding for Federal income tax, FICA and Medicare purposes. Its non-disclosure may or may not affect payment of benefits.

Date:

ADDENDUM 5

INFORMATION TO APPRAISERS REGARDING THE HOMEOWNERS ASSISTANCE PROGRAM

1. The Homeowners Assistance Program (HAP) is authorized by an Act of Congress which provides that federal employee homeowners may be entitled to reimbursement for some of the real estate losses they incur when their job is transferred or terminated and they have to relocate due to an installation being closed or realigned.
2. If the homeowner is unable to sell his/her home, the government will acquire it. However, this is not an acquisition in the usual sense as there is no Federal requirement for the houses and the acquisition is solely for the benefit of the homeowners. There is no condemnation in this program, nor is there any judicial review of the determinations made.
3. In this program, fair market value appraisals of houses, one to two-family residences and condominiums will be needed to determine benefits to be paid to the applicant or to a third party on his/her behalf. For instance, where an applicant has sold his/her home, we take an amount equal to 95 percent of the FMV prior to the public announcement date that the installation is being closed, subtract the FMV at the time of the sale from the 95 percent figure, and pay the difference to the applicant. Where an applicant is unable to sell the house himself/herself, he/she may sell the house to the government for the amount of the outstanding mortgages or for 75 percent of the FMV prior to the public announcement date.
4. Although the government purchases the house at 75 percent of the prior FMV or the amount of the outstanding mortgages, we must also know the after value of the house for determining the applicant's tax liability.
5. The appraiser will invite the owner or his/her representative to accompany him in the detailed inspection of the property and give careful attention to all information and comments given by the owner. During owner contact, no commitments will be made as to valuation estimates.
6. Each appraisal report will contain, as a minimum, the following:
 - a. A completed residential appraisal report, FNMA Form 1004.
 - b. A floor plan sketch of each subject property.
 - c. Photographs of each subject property; front view, rear view, and street scene. Photographs of other major improvements and significant deferred maintenance or damage; front view of each comparable sale used.
 - d. For condominiums or two family residences, the appraisal will use FNMA Form 1073 or FNMA Form 1025, as appropriate.
 - e. For the prior FMV, include a brief discussion of the value in relation to original acquisition costs.
 - f. For after value appraisals, include a brief discussion of value in relation to the subject property's sale price or the foreclosure sales prices.

g. The contributory value of all improvements added by the owner/applicant will be considered and included in both the prior and after value appraisals. Capital improvements existing at the time of the property inspection must be utilized in both the prior and after value appraisals even if they did not exist at the time of the prior value appraisal or public announcement date. Any improvements made by a subsequent purchaser/owner, after a private sale or foreclosure, must be omitted in each the prior and after appraisal.

h. A general sales map showing the location of the subject and each comparable will be included in each report.

i. Other items as appropriate, particularly a narrative discussion of any item or factor that cannot be adequately covered or explained in a form report.

7. Each report shall be typed and submitted with an original and the number of copies needed depending on the dollar amount of the appraisal.

8. Delivery of the appraisals by a contractor should take no more than 21 days and the contract shall provide for liquidated damages for each day of delay, except when the delay arises from causes beyond the control or without fault or negligence on the part of the contractor.

ADDENDUM 6

SCREENING FOR ENVIRONMENTAL HAZARDS IN DEWELLING ACQUIRED BY THE GOVERNMENT

1. Required Screening/Inspections. Two screening inspections must be performed after acquisition of a dwelling:

a. Lead-Based Paint (LBP) screening required by the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§4821 et seq.;

b. Asbestos screening.

2. Methods of Performance. The method of performance of the screenings, i.e., whether performed by Corps personnel or by contractor, is at the district's discretion. If warranted by the volume of the program, the district may choose to have a contractor perform both screenings. However, LBP screening and asbestos screening should not be contracted for separately as LBP screening requires no special training or expertise and can be performed by any individual performing the asbestos screening.

3. Format of Reports. No particular form is required for reporting the results of LBP or asbestos screening.

4. Lead-Based Paint Screening. The most recent law pertaining to the abatement of LBP in housing units is Public Law 102-550, Title X, commonly known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. This Act broadly regulates LBP in Housing units; however, many of its provisions had not taken effect until 1 January 1995. Additionally, the Department of Housing and Urban Development has not yet promulgated the requisite guidance and regulations called for by the Act.

a. Until the provisions of the 1992 Act take effect, the sale of Army-controlled houses which contain LBP will continue to be governed by the 1978 Lead-Based Paint Poisoning Prevention Act, Public Law 91-965.

b. The current Army policy for the elimination of LBP hazards in properties covered by BRAC actions is based substantially on the 1978 Act. Although directed at BRAC properties, it is prudent to apply the same policies to HAP acquired houses even though HAP properties are not acquired for an Army mission, but only for the convenience of the HAP applicants.

c. Accordingly, the Army has committed itself to ensure properties sold for residential habitation are free of immediate LBP hazards. A visual inspection of all applicable surfaces in houses constructed prior to 1978 is required. All surfaces where the paint is cracking, flaking, chipping, peeling, or loose, are termed a "defective paint surface", are assumed to be immediate LBP hazards and must be covered or removed.

d. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns), chemicals, or replacement of the painted building component. Machine sanding, dry hand sanding, and use of propane or gasoline torches are not permitted. Washing and repainting without thorough removal or covering is not considered adequate treatment.

e. If no immediate LBP hazard exists, a prospective purchaser must be notified prior to the purchase (1) that the property was constructed prior to 1978 and that it may contain LBP; (2) of the hazards of

LBP; (3) of the symptoms and treatment of LBP poisoning; (4) of the precautions to be taken to avoid LBP poisoning; and (5) of all results of inspection, assessment, or testing for LBP and LBP hazards.

5. Asbestos Screening. Asbestos screening will initially be accomplished by a determination of whether or not friable asbestos is suspected. If there is no crumbling or pulverized insulation, tiles, roofing, shingles or other construction material which may contain asbestos, it may be assumed no friable asbestos is present. If, however, there is reason to suspect friable asbestos is present, an inspection will be performed by a qualified inspector, either Corps or contractor, proficient in asbestos detection and DA/DOD asbestos policy.